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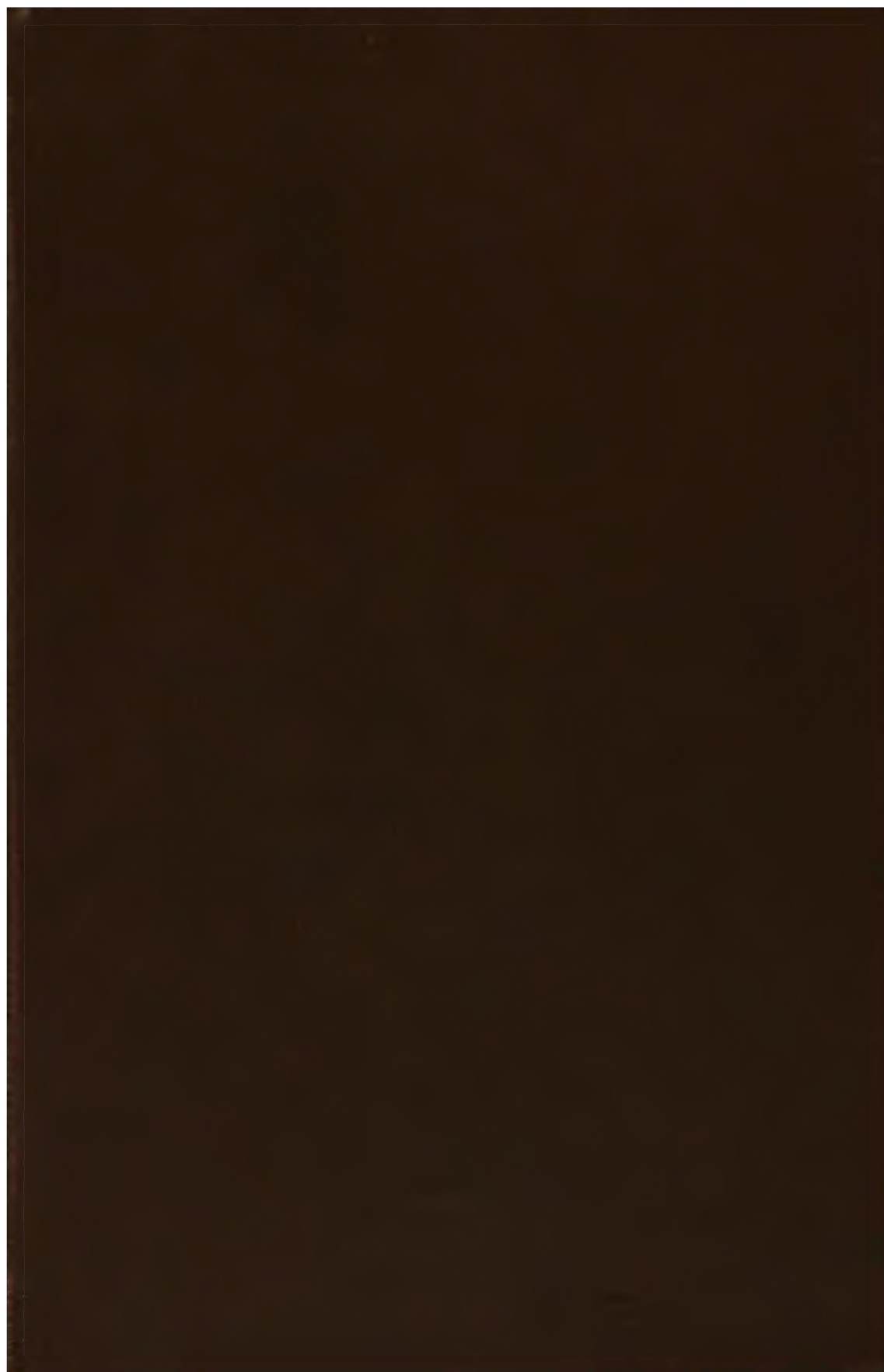
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**CITIZENSHIP IN THE
CHOCTAW AND CHICKASAW NATIONS**

HEARINGS

**BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON
INDIAN AFFAIRS, HOUSE OF REPRESENTATIVES**

ON

H. R. 15649

**WASHINGTON
GOVERNMENT PRINTING OFFICE**

1908

A BILL Extending the provisions of an act approved February sixth, nineteen hundred and one, entitled "An act amending the act of August fifteenth, eighteen hundred and ninety-four, entitled 'An act making appropriations for current and contingent expenses of the Indian Department and fulfilling treaties and stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes,'" to any person claiming any right in the common property of the Choctaw or Chickasaw Indians or tribes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of an act approved February sixth, nineteen hundred and one (chapter two hundred and seventeen, United States Statutes at Large, Fifty-sixth Congress), entitled "An act amending the act of August fifteenth, eighteen hundred and ninety-four, entitled 'An act making appropriations for current and contingent expenses of the Indian Department and fulfilling treaties and stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes,'" be, and the same is hereby, extended to any person claiming any right in the common property of the Choctaw or Chickasaw Indians or tribes; and in order to make said act applicable to any person claiming any such right in said property said act is hereby amended to read as follows:

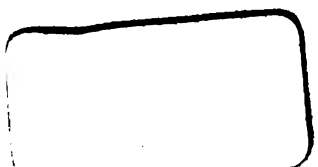
"Sec. 2. That all persons who are in whole or in part of Choctaw or Chickasaw blood or descent and who are entitled to share in the common property of the Choctaw or Chickasaw Indians under any treaty with said Indians or law of Congress, or who claim to be so entitled under any treaty, grant, agreement, or act of Congress, or who claim to have been unlawfully denied or excluded from participating in the common property of the Choctaws or Chickasaws to which they claim to be lawfully entitled by virtue of any treaty, grant, agreement, or act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district or circuit court of the United States; and said district and circuit courts are hereby given jurisdiction to hear, try, and determine any action, suit, or proceeding arising within their respective jurisdiction and involving the right of any person, in whole or in part of Indian blood or descent, to share in the common property of said Choctaw or Chickasaw Indians under any treaty, grant, agreement, or law of Congress (and in said suit the parties thereto shall be the claimant as plaintiff, and the Choctaw and Chickasaw nation or tribes jointly as party defendant); and the judgment or decree of any such court in favor of any claimant to share in the common property of said tribes shall have the same effect, when properly certified to the Secretary of the Interior, as if such judgment or decree had been allowed and approved by him: *Provided*, That the right of appeal shall be allowed to either party as in other cases, and that no act of Congress or agreement limiting

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the time in which an application or assertion of right should be made shall operate to defeat the rights of any person entitled to share in the said common property under any treaty with or grant to said Indians.

"SEC. 3. That the plaintiff shall cause a copy of his petition, filed under the preceding section, to be served upon the district attorney of the United States in the district wherein suit is brought, and shall mail copies of same, by registered letters, to the principal chief or governor of the Choctaw and Chickasaw nations, respectively, and shall thereupon cause to be filed with the clerk of the court wherein suit is instituted an affidavit of such service and the mailing of such letters. It shall be the duty of the district attorney upon whom service of petition is made as aforesaid to appear and defend the interests of the Choctaw and Chickasaw nations in the suit, and within sixty days after the service of petition upon him, unless the time should be extended by order of the court made in the case, to file a plea, answer, or demurrer on the part of the Indian governments or tribes, and to file a notice of any counterclaim, set-off, claim for damages, or other demand or defense whatsoever in the premises: *Provided*, That should the district attorney neglect or refuse to file the plea, answer, demurrer, or defense, as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises; but the plaintiff shall not have judgment or decree for his claim, or any part thereof, unless he shall establish the same by proof satisfactory to the court.

"SEC. 4. That whenever it shall appear to the satisfaction of the court in which the proceedings has been instituted that there is in the possession of any department of the Government or of any bureau, division, or commission thereof or thereunder, any record or records material to the proper determination of the issue being heard, or about to be heard, the head of the department in which such record is kept shall, upon request of the judge of said court, transmit a certified copy of the record or records on file in his department to the clerk of the court to be used at the trial of the case without any charge therefor: *Provided further*. That all records in the possession or custody of any Government officer or department or division, bureau, or commission thereof or thereunder pertaining or appertaining to the rights of any such claimant shall, upon request of the claimant or his authorized attorney, be open to inspection: *Provided further*. That all suits brought under the provisions of this act shall be commenced within six months after the passage of this act, and the court, upon the request of either the plaintiff or defendant, shall advance any suit instituted under the provisions of this act on the dockets thereof to as early hearing as is consistent with the rights of the parties and the interests involved."



CITIZENSHIP IN THE CHOCTAW AND CHICKASAW NATIONS.

COMMITTEE ON INDIAN AFFAIRS,
HOUSE OF REPRESENTATIVES,
February 25, 1908.

Present: Hon. B. S. McGuire (chairman), Hon. E. A. Morse, and Hon. John H. Stephens.

Webster Ballinger and Albert J. Lee appeared for claimants. George A. Ward, attorney for the Indian Bureau, present and representing the Department of the Interior.

Mr. Webster Ballinger addressed the committee as follows:

Mr. Chairman and gentlemen of the committee, the bill (H. R. 15649) now before you for consideration, if enacted into law will afford an opportunity to about 12,000 persons, admittedly of Choctaw or Chickasaw Indian blood and descent, and who allege—and that allegation is abundantly sustained by the record in this case—that they have a vested right in the common property of the Choctaw and Chickasaw Indians by reason of their Indian blood and descent. They allege—and this allegation is also abundantly sustained by the record—that certain administrative officers, charged by law with the duty of ascertaining their Indian blood and descent and determining their rights, denied them enrollment as members of the tribes, and thereby denied their right to share in the common trust property of the Choctaws and Chickasaws through (1) error of law; (2) gross mistake of fact; (3) actual fraud committed by said administrative officers.

The bill under consideration proposes to extend to these 12,000 people, who are of Indian blood, some of them full blood, and who are now citizens of the United States, the right to go into the Federal courts under the provisions of the act approved February 6, 1901, and which act is in force in every State and Territory in this Union and applicable to every citizen and noncitizen occupant of an Indian reservation, excepting only the members of the Five Civilized Tribes and the Quapaw Indians, which tribes were expressly excepted from the operations of said act, and have a court of competent jurisdiction, free from the suspicion and taint of fraud, determine their property rights. These 12,000 people are admittedly a part of the designated class of people for whose benefit the grant was made, and they ask you to enact this bill which will permit them to go into a Federal court, and there in open court with notice to all the world, and with the officers of the Department of Justice there to dispute their claim, to offer their evidence and have their claims determined according to law. Surely this is not an unreasonable request. It is a right freely enjoyed to-day by every claimant to Indian property in every State and Territory of this Union excepting claimants to property in the Five Civilized Tribes and the Quapaw Nation. Will

you deny to these people a right which you have given by legislation to not only citizens of the United States, as these people are, but to noncitizen occupants of Indian reservations? They do not ask you for any special privileges. They are not mendicants and beggars. They are demanding the right to go into a constitutional court and have their claims decided once and for all time by the Federal courts, a right given to every other person in this land claiming rights in Indian property, but which by your legislation in the past you denied to them.

Mr. Chairman, these 12,000 claimants assert a right to share in this common trust property and base that right upon a treaty entered into with the Choctaw Nation in 1830, under which the property in controversy was conveyed to the Choctaw Nation in fee simple in trust for the exclusive use and benefit of those persons who comprised the Choctaw community of Indians on the day the treaty of 1830 was ratified and their descendants. Article 2 of the treaty of 1830 provides:

The United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it.

Then follows a description of the land. The words appearing in this article, "in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it," were inserted, as the journal record of the negotiations which resulted in this treaty shows, at the instance of the Indians, who refused to sign the treaty unless the conveyance was made in fee simple and the United States absolutely and irrevocably passed all its right, title, and interest in and to the lands to the Indians, which property was to be exclusively to the use of those persons who comprised the Choctaw Nation and their descendants and no other person was to ever share in the same, and the United States guaranteed that the terms of the treaty should be strictly adhered to by the Federal Government.

In order that we may frame an issue before the committee I now ask Mr. Ward, who is present and representing the Department, whether the Department denies that the title to this property was acquired under and by virtue of the second article of the treaty of 1830, which I have just read.

Mr. WARD. We deny that the grant to the Choctaws was made under the treaty of 1830 and insist that the conveyance was made under the treaty of 1820.

Mr. BALLINGER. Mr. Chairman, I am glad to know the exact contention of the Department upon this question, for it is the first time that the Department or any attorney representing these nations has ever disputed our contention that the conveyances was made under and pursuant to the second article of the treaty of 1830.

No lawyer has ever heretofore asserted that the conveyance of the property in controversy was made under and by virtue of the treaty of 1820, and I submit that no person who has examined into the question and who possesses even a rudimentary knowledge of law, or who has ever opened the covers of Blackstone would seriously make such an assertion. Let us now examine this treaty under which the De-

partment contends this grant was made. Article 2 of the treaty of 1820 provides:

For and in consideration of the foregoing cession on the part of the Choctaw Nation, and in part satisfaction for the same, the commissioners of the United States, in behalf of said States, do hereby cede to said nation a tract of country west of the Mississippi River, situate between the Arkansas and Red River, and bounded as follows.

This treaty does not even purport to pass a fee to the property in controversy. Under this provision of the treaty of 1820 a conveyance of the right of occupancy only was made to the land which forms the subject of this controversy. The treaty says:

The commissioners of the United States, in behalf of said States, do hereby cede to said nation a tract of country west of the Mississippi River.

There was no mention of a conveyance of a fee, and it was because the Indians discovered that this treaty did not convey to them an absolute title to the lands in controversy that they refused to comply with the treaty and remove to and settle on the western lands. They held their eastern land located in Alabama and Mississippi on the same terms that it was proposed to cede to them by this treaty the western lands. The white settlers in Alabama and Mississippi had been constantly encroaching upon their lands, and taking them from the Choctaws at pleasure. The Indians found themselves powerless to resist these encroachments, and the correspondence and negotiations conducted after this treaty was ratified, and which culminated in the treaty of 1830, shows conclusively that the reason the Choctaws would not accept the provisions of the treaty of 1820 was that by the terms and provisions of that treaty they had no greater security against encroachment upon their western lands than they had against encroachments upon their eastern lands, to which latter lands they held also the possessory title only.

The attempt on the part of the authorities of Alabama and Mississippi to enforce the State laws against the Choctaws and the encroachment of the white settlers upon their lands culminated in the Choctaws, on the 17th day of March, 1830 (and prior to the enactment of the act approved May 28, 1830), submitting to President Jackson a draft of a proposed treaty for the cession of all their lands east of the Mississippi River to the United States, the conveyance by the Government to them of a full and perfect title in fee simple to the western lands, and their removal thereto.

President Jackson redrafted the proposed treaty—making many changes and alterations in practically all of the articles, except article 1, which provided for the conveyance of the western lands to the Choctaws—in which draft it was expressly stated that the title to be conveyed must be a full and perfect title in fee simple, and on the 6th day of May, 1830, he transmitted the two drafts of the proposed treaty, accompanied by a protest signed by certain persons claiming to be full bloods, and a special message explanatory thereof, to the Senate of the United States, by special message explanatory thereof, and requested the views of the Senate with reference to the terms upon which it might be advisable to conclude a treaty with the Choctaws. (Messages and Papers of the Presidents, vol. 2, p. 479.)

Articles 1 and 30 of the proposed treaty, as drafted by the Choctaws and transmitted to President Jackson, provided in part as follows:

ARTICLE 1. The United States shall secure to the said Choctaw Nation of red people the perpetual peaceful possession of all that tract of country known and described in the treaty as the Choctaw land west of the Mississippi River, embraced in the following lines and limits, viz: * * * and immediately on the ratification of this treaty a patent shall be issued by the President of the United States granting and transferring to the said Choctaw Nation of red people a full and perfect title in fee simple to all the land within the before-described limits, and forever warranting and defending the peaceable possession of the same to the Choctaw Nation, their descendants, and citizens.

ART. 30. This treaty is the only proposition that the Choctaw Nation will ever make to the United States, and proposes the only terms on which the said nation will emigrate to the West: * * *

Article 1 of the treaty proposed by the Choctaws, as amended by President Jackson and submitted to the Senate, was as follows:

The United States shall secure to the said Choctaw Nation of red people the perpetual peaceful possession of all that tract of country known and described in a treaty as the Choctaw lands west of the Mississippi River, embraced in the following lines and limits, viz:

And so soon after the ratification of this treaty as Congress shall authorize it a patent shall be issued by the President of the United States granting and transferring to the said Choctaw Nation of red people a full and perfect title in fee simple to all the land within the before-described limits, and forever warranting and defending the peaceable possession of the same to the Choctaw Nation and their descendants.

The Senate Committee on Indian Affairs stated in its report to the Senate that, after fully considering all the documents transmitted by the President relative to the proposed treaty with the Choctaws, it did not deem it admissible to recommend the ratification of the treaty, for, among other reasons, that one of the documents transmitted was a protest from one of the districts of the Choctaw Nation; that as the treaty had not been negotiated by Government officers after a poll of the nation, the committee had no way of knowing what percentage of the Choctaw people were in favor of making any treaty with the United States, and therefore recommended that the Senate advise the President by resolution not to "make or ratify" the proposed treaty. On May 27, 1830, the Senate adopted the following resolution:

Resolved, That the Senate do advise the President of the United States not to make or ratify the treaty which the Choctaw Indians have proposed in the project submitted to him dated the 17th day of March, 1830, and which accompanied his message to the Senate on the 6th instant. (Executive Journal, vol. 4, p. 111.)

PRESIDENT JACKSON'S REPRESENTATIONS TO THE CHOCTAWS AND CHICKASAWS.

President Jackson thereafter advised the Choctaws of the action of the Senate and informed them that he would meet the Choctaws and Chickasaws at Franklin, Tenn., and personally inform them of the policy and intentions of the Government, in order that a treaty might be negotiated which would be acceptable to the Senate.

President Jackson, accompanied by Secretary of War John H. Eaton and Gen. John Coffee, arrived at Franklin, Tenn., on Monday,

August 23, 1830. The Choctaws were not present. The Chickasaws, who were assembled, were addressed by President Jackson at some length, in which address the President urged the Chickasaws to consent to remove west of the Mississippi, and as an inducement to them pointed out that their new homes west of the Mississippi would be the property of them and their children. The President said:

Determine what may appear to you best to be done for the benefit of yourselves and your children. The only plan by which this can be done, and tranquillity for your people obtained, is that you pass across the Mississippi to a country in all respects equal, if not superior, to the one you have. Your Great Father will give it to you forever, that it may belong to you and your children while you shall exist as a nation, free from all interruption. (Senate Doc. 512, vol. 2, p. 240, 23d Cong., 1st sess.)

On the 26th of August the President and his associates met the Chickasaw delegates. J. McLish, secretary of the Chickasaw Nation, delivered the reply of the Chickasaws to the address of the President, in part, as follows:

FRIENDS AND BROTHERS: Our Father, the President, has communicated to us through you (Major Eaton and General Coffee) his earnest desire to make us a prosperous and happy people. To accomplish this great object, that is to us so desirable, he proposed to give us a country west of the Mississippi in exchange for the country we now possess, in fee simple, or, to use his own words, "as long as the grass grows and water runs." (Senate Doc. 512, vol. 2, p. 244, 23d Cong., 1st sess.)

President Jackson then instructed his commissioners, Secretary of War John H. Eaton and Gen. John Coffee, to continue the negotiations with the Chickasaws, and then proceed to Mississippi and conduct negotiations with the Choctaws, with the object in view of entering into treaties with both tribes, and especially instructed his commissioners "to act liberally toward them."

On September 15, 1830, Secretary of War John H. Eaton and Gen. John Coffee arrived at the Indian agency at Dancing Rabbit Creek, Mississippi, in pursuance of the instructions of President Jackson. Negotiations looking to the formulation of a treaty with the Choctaws were immediately thereafter commenced. (Journal of Proceedings, Senate Doc. 512, vol. 2, p. 251, 23d Cong., 1st sess.)

On September 18, 1830, Secretary of War John H. Eaton and Gen. John Coffee advised the Choctaws at the treaty grounds as follows:

BROTHERS: We have come a considerable distance to meet you, under the direction of your Great Father. He has invited you to meet and shake hands with him in Tennessee, that, as a friend and a father, he might speak with you. He was informed at Washington City that you desired it. Arriving at home, he sent Major Donley to you with news of his wishes, of his desire to converse with you on matters of deep and lasting interest to your nation. You refused to come, and returned for answer that you could not. Well might your Great Father then have said: "I will no more try to preserve you, but leave you to live as you can under the laws of the States." When thus he was about to determine to leave you and no more persuade you to a course of happiness, a messenger reached him, bearing from two of the three districts of your nation a memorial entreating that commissioners might be sent. Anxious still for those who had fought by his side in behalf of his country, he determined to yield that request and to send those who would speak his wishes freely and candidly, and thereby prove the desire he entertained to preserve you, notwithstanding his previous friendly offers had been rejected.

* * * * *

BROTHERS: In 1820, by a treaty made with you at Doak's Stand by your present Great Father, an extensive and fine country was given to you for the use of your people. It was a gift to you, for the country you ceded to the United States

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was paid for fully. It was the understanding at the time that the Choctaws would remove; and on that account was it that a large, salable, and fertile country was provided for your nation and your people. Ten years have passed by and you are still here. The country intended for you yet remains wild and unsettled.

BROTHERS: A fertile country beyond the Mississippi, and another possessed here, is more than you should expect. If you will not remove other Indian tribes may desire to do so; and, where they shall elect to settle, a home must be furnished; others wanting it, the country should not remain a desert. *You must decide which you will take and which you will live upon; both countries you can not possess—it is unreasonable to expect it.* If you prefer to live under our laws and customs, remain and do so, and surrender the lands assigned to you west of the Mississippi, or otherwise remove to them. There your Great Father can protect you; and there, undisturbed and uninterrupted by the whites, you can enjoy yourselves and be happy, now and for years to come. Rest assured you can not be so here. But, if you think differently, then continue where you are. After the present time we shall no more offer to treat with you. You have commissioners in your country for the last time. Hereafter you will be left to yourselves and the laws of the States within which you reside; and, when weary of them, your nation must remove as it can, and at its own expense. Whatever you may determine upon, whether to remove or to remain, our earnest and sincere wishes are that you may be happy and contented. For you we have the best feelings; our complexions are different, but our hearts and our nature are the same. The Great Spirit above is our common Father; He has made us all and we are all His.

Wednesday, 22.—The commissioners met the council at 10 o'clock, the chiefs and their captains present, except Netuchache, who was reported to be sick from the bite of a spider. Order and silence being had, the commissioners proposed, for their consideration and approval, the outlines of the treaty they were willing to enter into. It is as follows.

* * * * *

The chief, Leadstone, inquired if the present treaty was to be considered as retaining former treaties and their provisions, or as repealing all former treaties, and the present one only to be relied on? The answer was, *that it was desirable fully to embrace everything; that the present might be considered the only treaty that was to be looked to; that, excepting former annuities, all previous treaties were to be considered as revoked and set aside.* The council then separated.

The negotiations continued until September 27, 1830, when the treaty was signed.

Article 2 of this treaty, as I have heretofore shown the committee, provided that—

the President of the United States shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River in fee simple, to them and their descendants, to inure to them while they shall exist as a nation and live on it.

Mr. McGUIRE. Did any fee pass by the treaty of 1820?

Mr. BALLINGER. None whatever. The treaty of 1820 merely provided for the cession by the Federal Government of the possessory right to the western lands.

Mr. STEPHENS. From what treaty do you get the fee simple?

Mr. BALLINGER. From the treaty of 1830, which expressly provided that the President of the United States should by special grant convey the land in controversy to the Choctaw Nation in fee simple, in trust for the exclusive use and benefit of those persons who comprised the Choctaw community on the date of the ratification of the treaty of 1830 and their descendants.

Mr. STEPHENS. What is the distinctive difference between the treaties of 1820 and 1830?

Mr. BALLINGER. By the treaty of 1820 the Government conveyed to the Choctaw Nation, without limitation to any particular class of

people, the possessory title only to the lands in controversy. By the treaty of 1830 the United States covenanted and agreed that the land should be conveyed by a patent signed by the President of the United States to the Choctaw Nation in fee simple, in trust for the exclusive use and benefit of those persons who comprised the Choctaw community of Indians on the day the treaty of 1830 was ratified and their descendants. These are the distinctive differences between the two treaties, and they are as wide as the difference between realization and hope.

Mr. STEPHENS. Was there a patent issued under the treaty of 1820?

Mr. BALLINGER. No; there was no patent issued under the treaty of 1820. There was no necessity for the issuance of a patent, for there was in reality no conveyance made.

Mr. STEPHENS. Was there a patent issued under the treaty of 1830?

Mr. BALLINGER. Yes, and in strict conformity with the terms and provisions of that treaty. The patent itself recites that it was issued under and by virtue of article 2 of the treaty of 1830. The patent is as follows:

PATENT.

The United States of America, to all to whom these presents shall come, greeting:

Whereas, by the second article of the treaty began and held at Dancing Rabbit Creek, on the 15th day of September, in the year of our Lord 1830 (as ratified by the Senate of the United States, on the 24th of February, 1831), by the Commissioners on the part of the United States and the Mingoes, chiefs, captains, and warriors of the Choctaw Nation, on the part of said nation, it is provided that "the United States under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation" a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it: Beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian fork, if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning. The boundary of the same to be agreeably to the treaty made and concluded at Washington City in the year 1825.

Now, know ye, that the United States of America in consideration of the premises, and in execution of the agreement and stipulation in the aforesaid treaty, have given and granted, and by these presents do give and grant, unto the said Choctaw Nation, the aforesaid "tract of country west of the Mississippi," to have and to hold the same, with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, as intended, "to be conveyed" by the aforesaid article, in fee simple to them and their descendants to inure to them while they shall exist as a nation and live on it, liable to no transfer or alienation except to the United States or with their consent. (Recorded, vol. 1, p. 43, General Land Office.)

Possibly the officers of the Interior Department to-day should not be censured for their utter and absolute disregard of law in dealing with the rights of citizens of the United States, for we find in this patent, issued in the year 1842, administrative officers inserting provisions not authorized in the treaty under which it was issued. There was no authorization in the treaty for the last provision in this patent reading:

Liable to no transfer or alienation except to the United States or with their consent.

This provision not being authorized by the treaty, it is elementary law that the administrative officers could not have imposed this additional condition upon these people by the patent.

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It was expressly understood by the contracting parties to the treaty of 1830 that that instrument should supersede, repeal, and annul every existing treaty between the Choctaws and the Government of the United States. Therefore, as the Choctaws had refused to accept the provisions of the treaty of 1820 and the Government of the United States had, through its representatives, informed the Choctaws that the treaty did not convey to them the title to the western land, it was therefore stipulated and agreed in the treaty of 1830 that the treaty of 1820 and all subsisting and existing treaties should be repealed and rendered null and void and that the treaty of 1830 should be the only treaty in existence between the Choctaw people and the Government of the United States. There can be no dispute upon this question, for the Supreme Court of the United States, in a unanimous opinion rendered in the case of *The United States v. The Choctaw Nation* (179 U. S., 508; 45 L. ed., 297), says what the second article of the treaty of 1830 did. The court says:

It can not be doubted that the purpose of article 2 of the treaty of 1830 was to provide for a special grant to the Choctaws of the lands intended to be ceded to them by article 2 of the treaty of 1820, and no others.

Mr. Chairman, if the officers of the Department of the Interior would accept the pronouncement of the Supreme Court of the United States upon questions of law in passing upon the rights of citizens of the United States, we would not be compelled to come to Congress with controversies of this nature. Not only has this question, raised here to-day for the first time by the attorney for the Department, been settled by the Supreme Court of the United States, but in a suit pending before the circuit court of appeals, eighth circuit, sitting at St. Louis, entitled *Bettie Ligon et al. v. Douglas H. Johnston et al.*, involving the very question of the nature of the title to all this land, the Government did not deem it expedient to raise this question in either their briefs or arguments filed or made in that case.

TREATY OF 1837.

Now, Mr. Chairman, following this treaty of 1830 with the Choctaws came the treaty of 1837 with the Chickasaws. That treaty was negotiated under the guidance and with the advice, consent, and approval of President Jackson and his administrative officers. President Jackson, through his Secretary of War, General Eaton, and his special commissioner, General Coffee, negotiated that treaty, and after seven years of correspondence between the officials of the Chickasaw Nation and the officials of the Choctaw Nation and the Government officers it was finally agreed that the Chickasaws should acquire by purchase, for a consideration of \$500,000, an equal, undivided, individual interest in this common trust property upon the same terms that the Choctaws held it. What were these terms? That every person who was a member of the Choctaw community in 1830 or who was a descendant of any such person should have a vested, equal, undivided interest in the common trust property.

Mr. STEPHENS. Without any restrictions as to those who refused to move west of the Mississippi River?

Mr. BALLINGER. On the contrary, there was an express provision contained in article 14 of the treaty of 1830, under which treaty the

grant was made, that those who desired to remain east of the Mississippi River and did not remove to the western land should not forfeit or lose any of their interest in and to this property.

Mr. STEPHENS. Was that after the issue of the patent?

Mr. BALLINGER. No, sir; that is a provision of the very treaty under which the patent was issued.

Mr. STEPHENS. That recitation was not in the patent, but in the treaty?

Mr. BALLINGER. In the treaty, and the patent was to be issued by the President of the United States in strict conformity with the covenants of the treaty.

Mr. STEPHENS. There is not a statute based upon the treaty?

Mr. BALLINGER. No, sir; but, Mr. Chairman, if there had been a statute which attempted to exclude the legal beneficiaries under this grant it would have been null and void, because the title to this property passed from the Government of the United States absolutely and irrevocably by the patent, and it was beyond the power of the United States to recall it at any time thereafter. The title to this property having passed from the Government of the United States in fee simple, and therefore forever, the only power that the Government could possibly exercise over this property thereafter was to see that it was administered upon by the trustee in strict conformity with the terms and provisions of trust created by the treaty and the grant.

Now we come to the treaty of 1855. It was argued before the Senate committee last winter—and I would like to know whether it is still the contention of the Department—that this treaty changed the nature of the holding of this property by the two tribes.

Mr. WARD. Yes.

Mr. BALLINGER. Let me understand you. Do you contend that it changed the title or merely provided for the amount each title should receive?

Mr. WARD. No; not as between the tribes and the Government. It changed the ratio; it divided it one-quarter and three-quarters, but that does not enter into this at all.

Mr. BALLINGER. That is immaterial to this issue. The treaty of 1855 did not and could not disturb the title to this property nor defeat the vested rights of any individual who was of the designated class for whose benefit the trust was enacted.

Now, I submit that the title having passed from the Government absolutely and irrevocably in fee simple by the patent issued in 1842 that no person who was a beneficiary under that grant and who had a property right under that grant could be deprived of his property without due process of law. Mr. Chairman, it is elementary law that no administrative officer, agent, or commission can produce due process of law. Nothing short of a constitutional court—a court that passes upon the rights of all persons alike, that hears before it condemns, that proceeds upon inquiry and renders judgment only after trial—can render a decision, decree, or finding that is in its nature due process of law. Has any constitutional court, passing upon the rights of all the people alike in the eastern district of Oklahoma, ever passed upon the rights of these claimants? I am sure that no officer of the Department would have so little disregard for truth as to assert such to be the fact. In fact, Mr. Chairman, the people

14 CITIZENSHIP IN THE CHOCTAW AND CHICKASAW NATIONS.

whom I represent have never been heard by any tribunal. nor have they ever had their rights properly determined. Administrative officers in the secret recesses of the Departments and commissions have juggled with their claims, but these claims have never in fact been heard and determined.

NO TRIBAL LAW COULD IMPAIR VESTED RIGHTS OF CLAIMANTS.

Effort has been made in the past to sustain a novel contention with the tribal authorities, and they alone could say who the beneficiaries under this grant were. The constitution of the Choctaw and Chickasaw nations expressly prohibit the enactment of any law by the tribal legislators that is in conflict with the constitution, treaties, and laws of the United States. The constitution of the Choctaw Nation provides:

We, the representatives of the people inhabiting the Choctaw Nation * * * assembled in convention at the town of Doaksville, on Wednesday, the 11th day of January, 1860, in pursuance of an act of the general council, approved October 24, 1859, in order to secure to the citizens thereof the right of life, liberty, and property, do ordain and establish the following constitution and form of government, and do mutually agree with each other to form ourselves into a free and independent nation, not inconsistent with the Constitution, treaties, and laws of the United States, by the name of the Choctaw Nation. (See pp. 5 and 6, Choctaw Laws, 1894.)

By this constitution the Choctaw people expressly recognize the binding force and effect of the treaties with and the laws of the United States.

Under this provision of the Choctaw constitution no valid law could be enacted that was in conflict with any treaty of the United States. (*Robb v. Burney*, 168 U. S., 218.)

CHOCTAW AND CHICKASAW CORRUPT INDIAN ADMINISTRATION OF TRUST PROPERTY RESULTED IN THE UNITED STATES GOVERNMENT INTERFERING.

About the year 1890 representations were made to Congress that the conditions existing in the Choctaw and Chickasaw nations had become intolerable; that neither life nor property was secure under the laws of the tribes; that the officials of the tribes had become corrupt, and that practically the entire Indian estates were being held by a few influential and corrupt individuals to the exclusion of the great majority of the people, who were equally entitled to share in the property under the treaties and the grant.

On the 29th day of March, 1894, the Senate adopted a resolution authorizing the Committee on the Five Civilized Tribes of Indians, or any subcommittee thereof appointed by its chairman, to inquire into the conditions existing in the Choctaw and Chickasaw nations, and clothing said committee, or any subcommittee thereof appointed, with full power to visit the Territories, to take testimony, to require the attendance of witnesses, and to administer oaths.

A subcommittee was appointed, consisting of Senators Teller, Platt, and Roach. Two of the members of this committee were admittedly the best posted men upon Indian matters in the Senate. I refer to Senators Teller and Platt. Both were men of the highest integrity and possessed of great familiarity with Indian affairs by reason of their long and continuous service on the Senate committee, and both were admittedly great lawyers.

In referring to the conditions existing in the Choctaw and Chickasaw nations the committee reported:

But in addition to this 50,055 Indians—

That was the census enumeration of 1890, showing the number of Indians in Indian Territory—

In addition to this 50,053 Indians there are large numbers of claimants to Indian citizenship who may or may not be Indians within the provisions of our treaties.

This committee does not say anything about the provisions of the Choctaw and Chickasaw laws, but, "within the provisions of our treaties," the one basic instrument that must govern and control the adjudication of rights in and to this property.

These are put down as 18,636, and includes the colored people whose rights of Indian citizenship are admitted as well as a large number who are not recognized by the Indian authorities as entitled to the rights of Indian citizenship, but who claim to be legally Indian citizens.

In referring to the title held by the Choctaw Nation the committee said:

The theory of the Government was when it made title to the lands in the Indian Territory to the Indian tribes as bodies politic that the title was held for all of the Indians of such tribe. All were to be equal participators in the benefits to be derived from such holding. But we find in practice such is not the case. A few enterprising citizens of the tribe—frequently not Indians by blood, but by intermarriage—have, in fact, become the practical owners of the best and greatest part of these lands, while the title still remains in the tribe, theoretically, for all; yet, in fact, the great body of the tribe derives no more benefit from their title than the neighbors in Kansas, Arkansas, or Missouri.

According to Indian law (doubtless the work of the most of the enterprising class we have named) an Indian citizen may appropriate any of the unoccupied public domain that he chooses to cultivate. In practice he does not cultivate it, but secures a white man to do so, who takes the land on lease of the Indian for one or more years, according to the provision of the law of the tribe where taken. The white man breaks the ground, fences it, builds on it, and occupies it as a tenant of the Indian, and pays rental either in part of the crop or in cash, as he may agree with his landlord.

Instances came to our notice of Indians who had as high as 100 tenants, and we heard of one case where it was said the Indian citizen, a citizen by marriage, had 400 holdings, amounting to about 20,000 acres of farm land.

Mr. STEPHENS. Was that Bill Washington?

Mr. LEE. It must have been.

We believe that may be an exceptional case, but that individual Indians have large numbers of tenants on land not subdued and put into cultivation by the Indian, but by his white tenant, and that these holdings are not for the benefit of the whole people, but of the few enterprising ones, is admitted by all. The monopoly is so great that in the most wealthy and progressive tribe your committee were told that 100 persons had appropriated fully one-half of the best land.

That refers to the Choctaw tribe.

This class of citizens take the very best agricultural lands and leave the poorer land to the less enterprising citizens, who in many instances farm only a few acres in the districts farthest removed from the railroads and the civilized centers.

As we have said, the title to these lands is held by the tribe in trust for the people. We have shown that this trust is not being properly executed, nor will it be if left to the Indians, and the question arises, What is the duty of the Government of the United States with reference to this trust? While we have recognized these tribes as dependent nations, the Government has likewise recognized its guardianship over the Indians and its obligations to protect them in their property and personal rights.

If the tribe fails to administer its trust properly by securing to all the people of the tribe equitable participation in the common property of the tribe, there appears to be no redress for the Indian so deprived of his rights, unless the Government does interfere to administer such trust.

Is it possible because the Government has lodged the title in the tribe in trust that it is without power to compel the execution of the trust in accordance with the plain provisions of the treaty concerning such trust?

Whatever power Congress possessed over the Indians as semidependent nations, or as persons within its jurisdiction, it still possesses, notwithstanding the several treaties may have stipulated that the Government would not exercise such power, and therefore Congress may deal with this question as if there had been no legislation save that which provided for the execution of the patent to the tribes.

Now, Mr. Chairman, what has the court said must be the basis for the distribution of such an estate? These questions are not new, undetermined, and unadjudicated questions, outside of the Interior Department. That is the only place they are not understood. The Court of Claims in the case of the New York Indians *v.* The United States (40 Court of Claims, pp. 556, 557), which decision was affirmed by the Supreme Court of the United States, and in which judgment was rendered in conformity with the mandate of the Supreme Court of the United States, said, in a similar controversy:

Consequently, the court must adopt a rule of descent or participation which would embrace all persons whom it was the policy of the United States to remove, and this rule being *ex necessitate rei*, once established must continue.

MR. STEPHENS. Where is that decision to be found?

MR. LEE. This is found in 40 Court of Claims, pages 556 and 557. Judgment was rendered in conformity with the decision of the Supreme Court, and upon this judgment rendered in that case an appeal was taken to the Supreme Court of the United States, and the Supreme Court dismissed it because it said this judgment was in conformity with its decree.

The court proceeds:

A court can not have one rule for one period of time and another for another period of time. The white wife and her children born between 1828 and 1860 were as much Indians within the intent of the treaty as any full-blooded Indian in the Six Nations, and what was the rule during that period of time must continue to be the rule up to the time of the judgment or the satisfaction of it; that is to say, the children of white mothers and Indian fathers affiliated with the tribes must be reckoned as Indians. The court must look upon the community and its members as such, and can not turn aside into the genealogy of individuals or be turned aside by the peculiarities of Indian laws and customs. This is not a question of Indian citizenship, or tribal custom, or communal ownership in Indian property, but simply a question of a contract and of the intent of those who entered into it.

Mr. Chairman, there was a case where the Interior Department undertook to carry out an Indian law and an Indian custom enacted in violation of a treaty with the Government, the same as they have attempted to carry out an Indian law and an Indian custom in administering upon this estate. The Department undertook to follow the Indian law that provided in effect that if an Indian man married a white woman his children should not be beneficiaries in the Indian estate, but that the Indian mother's blood alone should control, and the court said that it was fallacious; that such a holding could not stand in a court of equity.

Again, Mr. Chairman, at the time this grant was made the Choctaws were not full bloods. They were possessed of an admixture of the white and black races.

What has been the rule of construction in the determination of rights under a grant where such conditions existed. Mr. Justice Shiras tells you what the law is, and the established and uniform

rule, and if the Department had adhered to his decision in the adjudication of these questions we would not now be here bothering you gentlemen to-day. Mr. Justice Shiras says in the case of *Sloan v. United States* (95 Fed., 197), which suit was brought under this very law that we want extended to these people:

It confers the right to an allotment upon Indians of the Omaha tribe. It makes no discrimination with respect to the mixed bloods. It must have been well known to Congress, as it unquestionably was to the Omaha tribe, that there was residing at that time upon this reservation as members of the tribe many persons of mixed blood, and if it was the purpose of the parties to exclude from the benefit of the act all persons who were not Indians of pure blood, apt words to that end would have been used.

What was the condition existing at the date of the ratification of the treaty of 1830? Was the Choctaw community composed only of full-blood Indians, or was the community composed then, as it is now, of a mixture of the white and black races?

These questions are removed from the domain of controversy by reference to volume 7 of the American State Papers (public lands). That volume contains a list of those members of the Choctaw community of Indians who selected reserves of land in Mississippi under the treaty of 1830, and was compiled in September, 1831, less than a year after the treaty was made. On page 77 appear the names of persons of mixed Indian and negro blood under the heading, "Names of Indians owning farms." In this list are the names of Sally Tom, with the notation "a free woman;" Joshua O'Reare, with the notation "a mulatto, married Sally Tom's daughter, and lives with Sally Tom;" William Lightfoot, "a mulatto, half Indian and half negro;" Jim Tom, "half-breed negro; has an Indian wife;" James Blue, "a negro man; had an Indian wife; lives below the factory."

Many other references are made therein to persons of mixed Indian blood. Indeed, in the year 1831, when this list was compiled by the Indian chiefs and approved by Government officers, a large percentage of the persons comprising the Choctaw community of Indians were either of mixed Indian and white or Indian and negro blood, and in many instances, as appears from the schedule, recognized members of the Choctaw community were not possessed of any Indian blood, being wholly of negro or white blood. The one and only essential requisite to full membership in the community of those affiliated with the Choctaw tribe was that he or she be a free person. Thus to-day the only essential requisite to participate in the tribal property of the Choctaws is descent from a person who was a member of the Choctaw community in 1830. The question of slavery having been eliminated, it is no longer a question for consideration.

The word "descendants" was advisedly used in the treaty, for at the date of its ratification the Choctaw people were living in a state of nature. The marital ties existing among them were not regarded with the same solemnity that they are in civilized communities to-day, illicit intercourse, as we now understand it, being a common practice, men and women marrying and unmarried at pleasure under the crude customs of the Choctaws. The mere living together of a man and a woman constituted a valid marriage, and the abandonment of the woman by the man constituted a valid divorce; but the ties

of consanguinity were strictly acknowledged; children became possessed of all their natural rights, and family tradition traced them to their remotest lengths. See *Wall v. Williamson* (11 Ala., 828); *Johnson v. Johnson's admr.* (9 Mo. Rep., p. 88); *Robinson's History of America*, book 4.

The very records which you, Mr. Ward, have in your office show that in the year 1831, when this list was compiled by the Indian chiefs and approved by the Government officers, a large percentage of the persons composing the Choctaw community of Indians were either mixed Indian and white or Indian and negro blood, and in many instances, it appears from the schedule, recognized members of the Choctaw community, were not possessed of any Indian blood at all. These questions are beyond the domain of controversy and dispute.

Now, Mr. Chairman, I shall proceed to the act of 1898 under which these people were enrolled. First, we have the acts of 1896 and 1897. There were very few people that made any applications or asserted any rights under either one of those acts, but in 1898 the Commission advised the Department—no, advised Congress, for it made its report to Congress, and thereby advised the Department indirectly—that under the previous laws requiring the submission of an application it could not secure a list of the persons who were entitled to share in this trust property. Thereupon, in 1898, Congress enacted a law, and the report on the bill drawn by Mr. Curtis, who was formerly a member of this committee, contains these words:

Provision has heretofore been made for the making of rolls of citizenship of the various tribes, but the Commission authorized to do the work is of the opinion that to do equal justice to all concerned they should have additional authority, and we believe this measure provides for the settlement of the question of citizenship, so that when the rolls are made the interest of all concerned will have been fully protected and this vexed and important question will be settled forever.

Mr. Chairman, when Congress commenced to enact legislation for the distribution of this property it made a mistake. Instead of providing that the legal beneficiaries under the trust should be enrolled, it provided that the citizens of the nation should be enrolled. Now, citizenship in the nation is a political question that Congress can control, but the distribution of property under a trust is something that Congress can not control to the injury of any person. The Constitution of our country throws a protection around every scrap of property that a man may own, and Congress or no other power in this country, thank God, can take the property of a citizen of these United States or of any person in our land except by due process of law.

Now, the act of 1898, with which members of this committee are familiar, directed the Commission to do what? And this was the first instruction given the Commission, "That in making the rolls of citizenship of the several tribes as required by law"—and what was the law?

The treaty under which this grant was made, "to them and their descendants."

"Said Commission is authorized and directed to make correct rolls of the citizens by blood." That meant any person who was of Indian blood if it meant anything in the world. Yet neither the

Indian Office nor the Commission to the Five Civilized Tribes gave it that construction—

Make correct rolls of the citizens by blood of all the other tribes, eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made.

Now, Mr. Chairman, that act directed the enrollment of every person who was of Indian blood. The Department could not legally confer property rights on persons of mixed Indian and white blood and exclude persons of mixed Indian and negro blood, as it has attempted to do. It directed the enrollment of persons of Indian blood, and it did not authorize the Department to go back and consider the question of the legitimacy of the children. Indian blood was the test, and the treaty provided that the conveyance should be made to the Choctaw Nation for the exclusive use and benefit of those persons who comprised the Choctaw community of Indians in 1830 and their descendants. Who ever heard of the word "descendants" being construed to mean only children born of a ceremonial marriage among Indians? Any child, whether the result of a lawful marriage or not, is as much a descendant within the meaning of the provisions of the treaty as the child born in lawful wedlock, but that was not the holding of the Department.

Mr. Chairman, there was one provision of that enactment that was absolutely null and void. It was beyond the power of Congress to impose. And that was the provision that provides "that no person should be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship." That was not one of the conditions upon which the grant was made, but by the terms of the treaty it was expressly provided that he need not remove, and that being one of the terms and provisions of the treaty, it could not be changed seventy-five years afterwards by an act of Congress, because you can not legislate my property away from me because I have not lived on my land.

Then, Mr. Chairman, again, such an enactment as that was in violation of the established rules of the Government as laid down in the laws of this country, for Congress had by repeated enactment been endeavoring in every way it could to induce the Indians to abandon their tribal relations and become citizens of the United States, and in every enactment it was expressly provided that the Indian who did thus abandon his tribe should not lose any of his tribal rights by reason thereof. That provision was put in the act of 1898, Mr. Chairman, at the suggestion and advice of one of these same gentlemen who had been holding practically the entire estate to the exclusion of hundreds of others equally entitled to it, but Congress was not aware, probably, when that enactment was made—I will say that no member of this committee was aware at that time; if he was, his advice was not adhered to—that such a condition as that was not one of the conditions of the grant.

Now, then, the Commission and the Department, when they came to adjudicate these cases, held that under the law—and I did not read all of it—but the act of 1898 directed that Commission to go out in the brush, to bring these people in before it, to examine them, and

gave the Commission all the power of a court; it gave it the power to punish for contempt; it provided that any false statement made before the Commission should be punished as if that false statement had been made in a court; it gave it all the machinery necessary to make full and complete rolls, and then provided in the last clause that when the rolls were so made as provided by this law they shall be final.

Now, the Department held that, notwithstanding the positive provisions of the law and the instructions of the Assistant Attorney-General to the contrary, that unless an applicant appearing before the Commission submitted an application for enrollment as a citizen by blood he could not be so enrolled regardless of the quantum of his Indian blood or his rights under the treaties. The Assistant Attorney-General in instructions to the Commission for its guidance in the preparation of these rolls directed the Commission as follows:

The act of 1897 did not provide for new applications for citizenship, neither did the act of 1898 make any provision for new applications for citizenship.

The Department, however, held, four years after these people were before the Commission, that unless they made an application for enrollment as a citizen by blood before the Commission, under a law which did not require it, they could not be so enrolled.

If that holding had been uniform the Department would have excluded from enrollment every person who appeared before the Commission under the act of 1898, and practically every person whose name appears upon the final approved rolls appeared before the Commission under the act of 1898. But the holding of the Department was not uniform. It was partial, special, and arbitrary. It was sufficiently elastic to take in such persons as the Government officers saw fit to enroll and to exclude from enrollment all persons who had incurred the ill-will of these Government officers. Not only were the holdings of the Department in utter disregard of law, an arbitrary exercise of power, an unjust imposition upon these people, but every other act of the Department and the Commission, excepting only the holdings of the Assistant Attorney-General's office, were equally arbitrary, special, and partial.

Commissioner of Indian Affairs Jones also issued instructions to the Commission for its guidance in the preparation of these tribal rolls.

He instructed the Commission as follows:

The rolls as made up by your Commission must, to become final, receive the approval of the Secretary of the Interior. It will therefore be necessary for you to make a record in all cases sufficient to enable this office and the Department to take intelligent action in the premises, and especially in those cases where your decision, either for or against the right of any person to have his name appear on the roll, is complained of.

For the purpose of this record you will require each applicant for enrollment to present himself in person before the Commission at one of its appointments within the tribe in which such applicant claims right to enrollment, for examination under oath, his statements to be taken down by the Commission, upon which the Commission will examine his right to enrollment, and such record of action by the Commission will be preserved and transmitted with the rolls to be considered by this office and the Department when the rolls made by the Commission are submitted for the approval of the Secretary of the Interior.

Did the Commission make a single record? Did they examine a single person in conformity with these instructions? Tams Bixby, chairman of the Commission to the Five Civilized Tribes, and who

supervised the examination and enrollment of persons under this act of June 28, 1898, appeared before the select committee of the Senate sitting at Muskogee on the night of November 16, 1906, and under oath testified as follows:

Q. Were you in the field when applicants were examined and identified under the act of 1898?

Commissioner BIXBY. I was in the Chickasaw Nation in the fall of 1898.

Q. Were you in charge of the examination and identification of either the citizens by blood, freedmen, or intermarried?

Commissioner BIXBY. I presided in the tent at which the applicants who claimed enrollment by reason of Chickasaw blood or Choctaw blood presented themselves.

Q. Was everything that was said by the applicant at the time he or she appeared before you for enrollment entered upon the examination record, such as that [exhibiting paper to the witness]?

Commissioner BIXBY. No, sir; not at all.

Q. Such portions of their statements as you deemed proper to place upon it?

Commissioner BIXBY. We did not take any testimony in our tent at all. (S. Rept. No. 5013, pt. 1, 59th Cong., 2d sess., pp. 498-500.)

A. S. McKennon, who was a member of the Commission in 1898 and 1899, appeared before the select committee of the Senate sitting at South McAlester in November, 1906, and under oath testified that he had charge of the work of the enrollment of persons of mixed Choctaw or Chickasaw Indian and negro blood. When asked by a member of the committee whether this class of persons were enrolled as freedmen Commissioner McKennon replied:

Yes, sir; I simply addressed myself to the task of determining whether they or their ancestors were slaves of the Chickasaws; if so, I enrolled them; if not, they were not entitled. (S. Rept. No. 5013, pt. 1, 59th Cong., 2d sess., pp. 946-947.)

Think of it, Mr. Chairman. It is a disgrace. A person of seven-eighths Indian blood and one-eighth negro blood appearing before that man for examination under a law which directed him to examine him as to his Indian blood, and the Department having instructed that officer of the Government to examine him as to his Indian blood, examining him solely as to his descent from a person once held in involuntary servitude. That was the uniform policy of that Commission. That is the reason I say that every act of the Commission, every act of the Department, was in violation of law and in ruthless disregard of the rights of persons who are put under the care of these officers, which officers took a solemn oath to uphold the law and thereby protect and care for these people. Mr. Chairman, it would have been infinitely better in the beginning of this controversy for Congress to have declared by act a confiscation of this property and turned it over to these administrative officers to loot and pillage at will.

Mr. Chairman, I have the affidavits here of men who worked with these commissioners, and who state under oath that they were instructed by the Commission not to make any record of the Indian blood of any person of mixed Indian and negro blood. Charles Cohee is one of them—

Mr. STEPHENS. Are the affidavits sworn to?

Mr. BALLINGER. Sworn to; all of them. Charles Cohee was selected by the governor of the Chickasaw Nation to work with this Commission. Another affidavit is that of W. L. Bennett, who was also an employee of the Commission. Another affidavit of Thomas

Norman, one of the most gentlemanly, honorable attorneys in the entire Choctaw or Chickasaw nations, or to be found anywhere within the limits of our several States, who sets out under oath the arbitrary action of the Commission.

But, Mr. Chairman, not only did they refuse to enroll these people as Indians, but when these people wrote to the Commission, addressing communications to the Commission in writing, and insisting upon their enrollment as Indians, the Commission returned those applications to them and refused to accept them, but informed them that if they would make an application for enrollment as freedmen they would enroll them accordingly.

Here is a copy of a letter from the Commission, certified copy of the original of which I have in my possession:

DEPARTMENT OF THE INTERIOR,
COMMISSION TO THE FIVE CIVILIZED TRIBES.
Muskogee, Ind. T., March 16, 1901.

PRINCE BUTLER, *Grant, Ind. T.*

DEAR SIR: Receipt is hereby acknowledged of the application for enrollment as a citizen of the Choctaw Nation of George Butler, the infant son of Prince and Mary Butler, born April 3, 1900.

The application is again returned for the reason as stated in the Commission's letter of the 23d of February. The mother of the child appears upon our records as listed for enrollment as a Chickasaw freedman. There is inclosed you herewith a new blank application which you will have made out in conformity with the corrections made in lead pencil upon the application returned to you herewith.

Upon return of the new application in proper form for the enrollment of the child as a freedman the matter will be given further consideration.

Yours, truly,

Acting Chairman.

Mr. Chairman, in the history of the world, under the most autocratic form of government, such a transaction as this never before occurred. Yet it is proposed by the Department to make these rolls, stamped upon their face with inaccuracy, gross mistake and fraud, final and conclusive as to the rights of these American citizens.

I want to refer to one other thing, and that is all shown in these official records, and if anyone wants the proof it is here under oath. The Commission permitted an employee, the secretary of that Commission, who had direct charge of the enrollment of every person of Choctaw or Chickasaw Indian blood, in the month of June, 1903, to accept a position in the office of Mansfield, McMurray & Cornish, a firm of attorneys employed to defeat the rights of these and other claimants, and who received as compensation for their work a consideration based upon each claim that was defeated. That man while actually in the employ of the Government, went into the office of Mansfield, McMurray & Cornish, and there spent a month in the year 1903 briefing and preparing cases against applicants, and in the following month he returned to the Commission and in the name of the Government of the United States, he passed upon, adjudicated, and determined the rights of the poor devils that he had briefed the cases against while in the office of Mansfield, McMurray & Cornish.

MR. STEPHENS. What is the name of that man?

MR. BALLINGER. William O. Bell.

MR. STEPHENS. Where is he now?

MR. BALLINGER. He was discharged as the result of charges that I personally preferred against him after they were fully investigated.

Mr. STEPHENS. Where can he be found now?

Mr. BALLINGER. He is at Muskogee, connected with Tams Bixby's newspaper, the Muskogee Phoenix; he is the general manager.

Mr. Chairman, when he returned to that Commission, not only did he perpetrate the outrages that I have just described, but he went further than that. He suppressed applications in cases where applications had actually been made in writing, which applications the Department held were essential to the enrollment of the claimants. He not only did that, but he directed the law clerks, although not a lawyer, as he himself testified, not having been admitted to any bar, nor having read a line of Blackstone or any other work to be found inside of two covers on law—he instructed law clerks how to write legal opinions denying to claimants their property rights. He not only did that, but he was promoted for that meritorious service by the Commission to the position of secretary to the Commission, and after he became secretary to the Commission he issued orders that no Choctaw or Chickasaw case should be transmitted to the Department until it came into his hands and he examined it and passed upon it.

Now, I make the positive statement of fact, as shown in these records, that he adjudicated cases, as he says, under bills pending in Congress, which possibly some of you gentlemen may have introduced, but which were not laws and never became laws, and he determined the rights of these people under those bills pending in Congress. This is the kind of work the Department says should stand, which if it were in a court of law, Mr. Chairman, would not stand three seconds. The men who are guilty of these outrages, Mr. Chairman, should stand behind the bars wearing the stripes of a convict. These outrages are a shame upon the fair name of our country. They are a disgrace to the Department under which these men were employed.

I want to advert here to that now famous legislative tribunal known as the Choctaw-Chickasaw citizenship court. That court, Mr. Chairman, it is charged and generally believed by every human being that ever came in contact with the members of it, was bribed and received as a consideration for their decisions in the cases of some of these claimants a part of the fee paid to Mansfield, McMurray & Cornish for robbing and despoiling these people of their rights. The evidence of their bribery has been in the possession of the Secretary of the Interior for the past ninety days—contained in the statement of a man who was in the office of Mansfield, McMurray & Cornish, who knew of his own personal knowledge, who saw with his own eyes the bribery of these men, the passing to them of money daily, the division of the fees among them, the distribution of that fee of \$750,000; who told the Secretary when, where, and how the money was disbursed, through what banks checks passed; and yet Mr. Chairman, no effort has been made on the part of the Department to bring these scoundrels before the bar of justice. The secret service, used particularly for investigating Members of Congress and hounding them, has been kept off these cases and the Department has refused thus far to investigate these crimes. Mr. Chairman, everything that has been done in the Choctaw and Chickasaw nations in connection with these estates is reeking and saturated with fraud.

Mr. STEPHENS. I would like to inquire the amount of that fee and how it was paid.

Mr. BALLINGER. Mr. Chairman, that fee of \$750,000 was paid this firm of attorneys for services before a legislative commission, not a court, and the duty of that legislative commission was, first, to determine two questions of law which had previously been passed upon by a United States district court and affirmed by the Supreme Court of the United States. But Congress, in its wisdom, directed this commission to redetermine questions of law which the Supreme Court had already determined, and provided that its determination should be final and conclusive, upon the rights of these parties. That commission found instantly that the district courts and the Supreme Court of the United States had erred upon the two questions of law.

Mr. STEPHENS. Where is that decision of the United States Supreme Court to be found?

Mr. BALLINGER. It is to be found in *Stevens v. Cherokee Nation* (174 U. S., 488; 43 L. Ed., 1056).

This legislative commission not only found those judgments to have been entered contrary to law; but that decision operated to render null and void every decision of every court in that country upon questions involving the rights of all these people.

Mr. STEPHENS. About how many claimants were affected by that decision?

Mr. BALLINGER. Five thousand people were, by the decision of that legislative court, deprived of their rights. And then the law provided that those who desired to take an appeal to this citizenship court could do so—their case to be tried *de novo*.

Mr. STEPHENS. What did the fee amount to in each one of these cases, in that particular case of \$750,000; I mean in each individual case?

Mr. BALLINGER. I don't remember the exact basis. The contract was based on 9 per cent, but the court did not allow that. The court allowed 7 per cent.

Mr. WARD. Three and one-half per cent.

Mr. BALLINGER. No; it is set out in the decree as 7 per cent. They valued the tribal right at \$5,000 per head, and they estimated that as about 4,000 claimants had been deprived of their property the attorneys had saved the nations about \$20,000,000 and accordingly allowed them a fee of \$750,000.

The CHAIRMAN. As I understand it, the firm of Mansfield, McMurray & Cornish were the attorneys for the Choctaws and Chickasaws?

Mr. BALLINGER. The Choctaw and Chickasaw nations.

The CHAIRMAN. Their duty in connection with this particular contract which resulted in this \$750,000 fee, as I understand from you, was to appear and prevent persons from being enrolled.

Mr. BALLINGER. Their duty under this contract, and I may add they were operating under several contracts, all approved by the Department, was to secure a readjudication of all cases of a certain class that had been previously adjudicated by the United States district courts, affirmed by the Supreme Court of the United States. That was the object of the legislation and the subject of their contract.

Mr. CHAIRMAN. Was the ultimate result to keep persons from being enrolled regardless of the merit of their claim?

Mr. BALLINGER. Yes; certainly. The contract with these attorneys was one of the most iniquitous schemes that could have been devised by the devil himself. It was a straight proposition to defeat claimants, regardless of the merits of their claims at so much per head, the fee to be based upon the value of the per capita tribal property. In other words, if these attorneys succeeded in defeating a claimant, whether he was legally entitled to his rights or not, they received compensation. If they did not knock him off the roll, they received no compensation whatever in that case.

Mr. STEPHENS. It was a contingent fee?

Mr. BALLINGER. Yes, sir; purely a contingent fee.

Mr. STEPHENS. Did not these same attorneys receive at the same time salary of \$5,000, \$10,000, or \$15,000 a year as attorneys' fee from these nations?

Mr. BALLINGER. These attorneys were then operating under several contracts, one of which provided that they should receive \$15,000 per annum and the expenses for their work before the Dawes Commission. They have received in the past ten years from the tribal governments, illegally and fraudulently, upward of \$6,000,000, and they have received altogether from the tribal governments and the Government of the United States in the past ten years upward of \$1,350,000, a very liberal compensation for three country attorneys, none of whom had ever tried a case in an appellate court, as I am advised, before their employment in these cases. But the infamous portion of these contracts was that the Government took the funds of these claimants whose rights had been denied and paid the money of these claimants to these attorneys to defeat their rights. In other words, the Government used the money of these people to defeat their rights and subjected them to the necessity of mortgaging their houses, wagons, farming utensils, and everything else in the world they possessed to defray the actual expenses of defending their rights against the avarice and greed of Federal officers who had been employed to protect them and to see that they secured their property.

For ten years these claimants were not only compelled to contest with these attorneys for the nations who were receiving hundreds of thousands of dollars per annum to defeat their rights by bribery of Federal officers, courts, and everything else that was purchasable, but they were compelled to contest their rights with the administrative officers who sat as judges in their cases, but who were in reality nothing short of attorneys for the nations and who used all their power to defeat the rights of claimants.

Mr. STEPHENS. Did some of these people own houses and farms and property?

Mr. BALLINGER. Why, Mr. Chairman, when a part of these people were enrolled by judgments of the United States courts and these judgments were affirmed by the Supreme Court of the United States they supposed that settled their rights and they then proceeded to make large expenditures in improving their allotments. Some of these people have spent as high as ten or fifteen thousand dollars, every cent they had in the world, in improving their allotments.

Four years after the decision of the Supreme Court was rendered came the decision of this citizenship court, the members of which it is alleged and universally believed were bribed, which citizenship court, through the influence of Mansfield, McMurray & Cornish, and induced by corrupt motives, rendered decisions denying to all these claimants their property.

That infamous citizenship court, and I use that term advisedly, denied the rights of children of the signers of the treaty of 1830, under which this grant was made—the grant being made exclusively for the use and benefit of the persons who comprised the Choctaw community in 1830 and their descendants. I have before me the correspondence of the Department with John T. Williams, a resident of Swink, Choctaw Nation, and a son of Ambrose Williams, who was one of the representatives of the Choctaw Nation who negotiated the treaty of 1830 and whose name appears thereon as one of the signers of that treaty and under which treaty this grant was made. The following is a verbatim copy of the departmental letter:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS.
Washington, May 4, 1907.

JOHN T. WILLIAMS, Esq.,
Swink, Ind. T.

SIR: The Office is in receipt of three letters written by you, one addressed to the Attorney-General of the United States, one to the Department of the Interior, and one to this Office, relative to your enrollment as a citizen of the Choctaw Nation and saying that you are going to have your rights as a citizen before you quit, and that you are going to appeal to the Supreme Court of the United States.

In reply, the Office can only repeat what it has told you heretofore, that it has no jurisdiction to consider any citizenship matter since the 4th of March, 1907, and that there is now no authority of law for placing the name of any person on any of the rolls of the Five Civilized Tribes in the Indian Territory.

There was no question in your case as to your Indian blood, and it was not denied by the Commissioner to the Five Civilized Tribes that you were a person of Indian blood. However, the possession of Indian blood was not enough under the law to justify your enrollment as a citizen of the Choctaw Nation. There are many persons of Indian blood who are not entitled to enrollment as citizens of the Five Civilized Tribes in the Indian Territory.

The Office has no reason to object to your appeal to the Supreme Court of the United States, if you so desire.

Very respectfully,

C. F. LARRABEE,
Acting Commissioner.

Under the grant what additional qualification could have been required of a person than that he was either a member of the Choctaw community as it existed in 1830 or was a descendant of such member? But the Indian Office and the Department of the Interior and the Commission to the Five Civilized Tribes found additional qualifications necessary, not qualifications authorized by law, but qualifications which they arbitrarily exacted. The applicant was not notified that additional qualifications were necessary, or that additional proof would be required or was necessary to perfect his claim, but in these secret recesses of the Department his claim was denied, without notice to him, and these administrative officers attempted thereby to divest him of his property rights—a crime I submit for which these administrative officers should have been punished severely.

(Thereupon the committee adjourned.)

MONDAY, March 2, 1908.

The subcommittee met this day at 10:45 o'clock, Hon. Bird S. McGuire (chairman) presiding.

There appeared before the subcommittee Mr. Webster Ballinger, attorney at law, Washington, D. C., in behalf of the bill, and Mr. George A. Ward, chief of division of Indian Territory, Office of Indian Affairs, in opposition thereto.

STATEMENT OF MR. WEBSTER BALLINGER, OF WASHINGTON, D. C.—Continued.

Mr. BALLINGER. Mr. Chairman and gentlemen of the committee, if you will permit me to have printed as a part of my remarks certain matters which I have typewritten, I will endeavor to confine my remarks merely to a statement of fact, unless the committee desires to hear me more fully. I have some important documents, such as a copy of the original contract between Mansfield, McMurray & Cornish and the Choctaw and Chickasaw nations, the judgment of the Choctaw-Chickasaw citizenship court, allowing them a fee of \$750,000, as well as other documents which have a strong bearing upon the questions at issue.

Mr. MCGUIRE. You may proceed, Mr. Ballinger, for twenty minutes, and then we will see what the outlook is for time. Proceed as briefly as you can, and at the same time with sufficient fullness to satisfy yourself.

Mr. BALLINGER. Mr. Chairman and gentlemen of the committee, at the close of my remarks the other day I was referring to the contract entered into with Mansfield, McMurray & Cornish with reference to certain claims to citizenship in the Choctaw and Chickasaw nations. I stated then that the contract provided that the attorneys should receive 9 per cent of the value of the property which claimants should receive in the event the judgments rendered by the United States district court remained intact. I also stated that those judgments had been affirmed by the Supreme Court of the United States in the case of Stephens against the Cherokee Nation, 174 United States. I will not read the contract, but merely portions of it, and I ask leave to include the entire contract in my remarks. The second article of this contract declares that [reads]—

Whereas many persons who are not Choctaw or Chickasaw Indians have fraudulently procured judgments of the United States courts in the Indian Territory, declaring them to be members of said tribes and entitled to allotments of tribal lands and property, and thereby the nations will lose several million of dollars in land and tribal property unless immediately and vigorous steps be taken to defeat the claims of said persons, jointly by the Choctaw and Chickasaw nations: Therefore,

Et cetera.

Now, the sixth provision of that contract, with reference to the compensation of these attorneys, provided as follows [reads]:

Sixth. That the compensation of the said Mansfield, McMurray & Cornish, parties of the second part, under this contract—

Mr. MCGUIRE. Just a moment, Mr. Ballinger. That starts out with a recitation to the effect that through the United States courts they have obtained judgments establishing the fact that they are of Indian blood?

Mr. BALLINGER. Yes, sir.

Mr. McGUIRE. Do you know how that could have been done? How was it done?

Mr. BALLINGER. Mr. Chairman, under the act of 1896 Congress provided that any person feeling aggrieved at the decision of the Commission to the Five Civilized Tribes might appeal to the United States district court, whose judgments should be final. More than 4,000 people, I believe more than 5,000 people, appealed from the judgment of the Commission to the Five Civilized Tribes to the United States district courts. They went into open court with notice to the world and, with the attorneys of the Choctaw and Chickasaw nations present, proved their cases by competent evidence and secured judgments of those courts entitling them to enrollment. After the rendition of those judgments it was contended by the attorneys for the nations that those judgments were not constitutional. A number of test cases were taken to the Supreme Court of the United States under the act of June 28, 1898. They were consolidated into one case, known as the case of *Stephens v. The Cherokee Nation*, reported in 174 United States; and the Supreme Court of the United States held the legislation and the judgments to be constitutional and valid.

Mr. McGUIRE. Do you know how many of them there were?

Mr. BALLINGER. In this class of cases there were over 4,000 persons. That is set out in this decree.

Mr. McGUIRE. Were any of these persons who had received such judgments from the Federal courts eliminated from the record of the Dawes Commission?

Mr. STEPHENS. Every one of them.

Mr. BALLINGER. Every one of them had been denied by the Dawes Commission and were denied until the United States district courts rendered judgments in their favor.

Mr. McGUIRE. Then they were put on?

Mr. BALLINGER. Yes; under provisions of a law that provided that if the United States courts rendered judgments in their favor, they should then be enrolled.

Now, Mr. Chairman, those judgments stood for four years, and in some cases longer than that. Those people secured allotments of land, went upon their land, and made valuable improvements thereon. Four or five years after those judgments had been affirmed by the Supreme Court of the United States this citizenship court was created, and you will observe that in the very first statement or paragraph of this contract it is boldly asserted that the judgments obtained were fraudulent. It is asserted, as a matter of fact, that they were fraudulent, without one scintilla of evidence to show any fraud that entered into any one of those cases.

Now, what is the nature of this contract with reference to the payment of the attorneys? I submit it was the most infamous contract that was ever entered into by any set of men. This sixth provision provides that—

The compensation of the said Mansfield, McMurray & Cornish, parties of the second part, under this contract, shall be 9 per cent of the value of the shares of tribal property which such of said so-called "court claimants," as hereinafter defined, as may be refused allotment or distribution of tribal property would have received in the event of allotment or distribution thereof to them, whether for past or future services to this end; and that, for the purposes of this contract it is agreed that the share of tribal property a "court

claimant" would receive, in the event of allotment and distribution thereof to him, is of the value of \$4,800, and is hereby so fixed; and the term "court claimant," as herein used, shall include all persons whose names were embraced in what purported to be judgment of the United States courts in Indian Territory, admitting them to Choctaw and Chickasaw citizenship, under the said act of Congress approved June 10, 1896; and all persons who have been born to or become intermarried with them, and who are claiming rights thereby,

Et cetera.

Under that contract there was a premium of \$432 offered to these attorneys for every person whose rights to enrollment could be defeated who had previously been enrolled by judgment of the United States district courts, said judgments having been obtained in open court, with notice to the world, and with all the opposition that the Choctaw and Chickasaw nations could concentrate at the hearings.

MR. STEPHENS. Had these same attorneys been representing the nations at the time of the trial of these cases before these Federal courts?

MR. BALLINGER. No; I think not.

MR. STEPHENS. They had been represented by other attorneys?

MR. BALLINGER. Yes. They had been represented by W. B. Johnson and Judge Stewart, of South McAlester, two of the most able and honorable attorneys to be found in that or any part of this country.

MR. STEPHENS. Had there been any appeal to a higher court?

MR. BALLINGER. Under the act of 1896 the judgments of the United States district courts became final.

MR. STEPHENS. How did they get the Stephens case, the one you mentioned, before the Supreme Court?

MR. BALLINGER. That was authorized by act of Congress and was appealed on the question of the constitutionality of the legislation authorizing the appeal from the Commission to the Five Civilized Tribes to the United States district courts.

MR. STEPHENS. I see.

MR. BALLINGER. Now, the court, the Choctaw and Chickasaw citizenship court, states exactly what was done by that court in its decree. The court says in its decree [reads]:

There were 263 cases transferred to this court, involving the right of 3,403 persons to citizenship in the Choctaw and Chickasaw nations. Of this number, 156 have been admitted to citizenship by this court and 2,798 persons denied citizenship; and 449 persons whose cases were dismissed for want of jurisdiction. Two hundred and twenty-nine persons who had their cases transferred to this court are included in the list of 3,403 persons mentioned heretofore who had obtained judgments of the United States courts for the southern and central districts of the Indian Territory admitting them and each of them to citizenship under the act of June 10, 1896.

You will observe the number of cases allowed by that court. Out of 3,403 cases passed upon by the court, 156 persons were allowed citizenship.

MR. MCGUIRE. Just a moment, Mr. Ballinger. How was that court created?

MR. BALLINGER. That court was created under the act of 1902. Provision creating this court was inserted as a part of the supplemental agreement with the Choctaws and Chickasaws approved July 1, 1902. These attorneys, Mansfield, McMurray & Cornish, came to Washington and represented to Congress that unless a provision was inserted in the supplemental agreement for the review of those court judgments under which these people were enrolled the Choctaw and Chick-

asaw people would not enter into any further agreement with the United States.

Mr. STEPHENS. After that contract was made those attorneys came to Washington and secured the passage of the legislation creating that court or commission?

Mr. BALLINGER. Yes, sir.

Mr. STEPHENS. They were then here working for the passage of that citizenship court bill and earning their fee? Was that part of the consideration?

Mr. BALLINGER. That was part of the consideration, and this contract antedates that legislation.

Mr. STEPHENS. They were procuring the legislation from Congress, and were successful in procuring that legislation?

Mr. BALLINGER. Yes.

Mr. STEPHENS. Did they state that they earned a part of the fee by having this legislation put through Congress?

Mr. BALLINGER. The court says in this decree (reads):

It is true that at the time this contract was entered into the chances for recovery were exceedingly remote, and if the attorneys had not succeeded they would not have received any compensation for their labor whatever.

Mr. STEPHENS. You are reading from the court record there, are you, of the judgment for fees they rendered in favor of these attorneys? Here is a letter that I will state I have from the Secretary of the Interior in regard to the resolution. [Submitting letter.] Probably you will find it in that.

Mr. BALLINGER. The provisions of law creating that court were sections 31, 32, and 33 of the act approved July 1, 1902. Now, these attorneys came to Congress under this contract and represented to the committees of Congress that unless a provision was placed in that legislation whereby these judgments of the United States courts could be reviewed and reversed the Choctaw and Chickasaw nations would refuse to ratify or confirm any agreements that might be proposed to them. Congress, which was imposed upon by those attorneys who were endeavoring to secure legislation that would enable them to get this premium of \$432 per head for every person they could knock off the rolls, enacted the legislation whereby this citizenship court, so called, came into being; and the duty of this court was to review, revise and reverse judgments of the United States district courts, which judgments, as I have repeatedly said, were affirmed by the Supreme Court of the United States. The court in its decree says—

Mr. STEPHENS. What decree is that you speak of?

Mr. BALLINGER. The decree of the Choctaw and Chickasaw citizenship court, allowing the fee of \$750,000 to these attorneys. (Reads:)

The evidence shows that there has been saved to the Choctaw and Chickasaw nations in money and property amounting in the aggregate to the sum of \$15,850,000 by reason of the efforts of said attorneys. The evidence further shows that it was this firm of lawyers who brought this matter to the attention of the lawmaking powers and departments of the Government and impressed upon Congress and the departments the great wrong that had been done the nations by placing the persons known as "court claimants" upon the rolls and thereby allowing a great number of persons to participate in the distribution of the property belonging to these tribes who were not entitled to such benefits. The evidence further shows that it was through the persistence of these attorneys that legislation was secured that gave the nations the right of a retrial of these cases; and this was done at the personal expense of said firm, and that they

have never been paid or do not claim the right to be reimbursed in the way of expenses for the sums thus expended; that at each session of Congress since this contract was entered into up to the time of the passage of the act of July 1, 1902, that some member of this firm was in Washington endeavoring to impress upon the lawmaking powers and the departments the justness of the claim of the Choctaw and Chickasaw Indians, and insisting that legislation be enacted that would allow the citizenship cases to be retired. After the passage of the act of Congress approved July 1, 1902, creating this court and the organization of this court for the trial of these cases, the attorneys have tried them all in the most prompt manner in the face of the most bitter opposition, going into nearly all the Southern States seeking and securing testimony that proved beyond all doubt that many persons known as "court claimants" had no rights whatever as Indians but were in a large measure white people who had secured judgments by fraud and perjury.

In this decree the court does not say that "practically all of these people had procured fraudulent judgments," but it says "many of them." But in this decree it strikes down the rights of practically every man, woman, and child who was enrolled by the judgments of the United States district courts.

I shall ask the stenographer to print as a part of my remarks this entire decree, commencing on page 6 and headed, "In the Choctaw and Chickasaw citizenship court sitting at Tishomingo, Ind. T., December term, 1904."

Following is the entire decree referred to:

In the Choctaw and Chickasaw citizenship court, sitting at Tishomingo, Ind. T., December term, 1904. In the matter of the petition of Mansfield, McMurray & Cornish, the attorneys employed by contract, dated January 17, 1901, with the Choctaw and Chickasaw nations, to have the court fix a reasonable compensation for services rendered in the trial of court claimant citizenship cases under the act of Congress approved March 3, 1903—66.

OPINION.

It seems from the evidence introduced in this proceeding that on the 17th day of January, 1901, Gilbert W. Duke, principal chief of the Choctaw Nation, on the part of said nation, and Douglas H. Johnson, governor of the Chickasaw Nation, on the part of that nation, entered into the following contract with the law firm of Mansfield, McMurray & Cornish, to wit:

This agreement witnesseth:

First. That the parties in interest to this contract are the Choctaw Nation, by Gilbert W. Dukes, of Tallhina, Choctaw Nation, Ind. T., principal chief thereof, and the Chickasaw Nation, by Douglas H. Johnson, of Emet, Chickasaw Nation, Ind. T., governor thereof, parties of the first part, and Mansfield, McMurray & Cornish, a firm composed of George A. Mansfield, J. F. McMurray, and Melvin Cornish, attorneys at law, residing at South McAlester, Ind. T., parties of the second part.

Second. That the authority under which this contract is entered into, the scope of such authority, and the reason for exercising the same, will appear from certain acts of the general council and the legislature of the Chickasaw Nation, as follows:

ACT OF CHOCTAW COUNCIL.

AN ACT To provide for the protection of the Choctaws and Chickasaws from the citizenship claims of those persons known as "court claimants."

Whereas many persons who are not Choctaw or Chickasaw Indians have fraudulently procured judgments of the United States court in Indian Territory, declaring them to be members of said tribes and entitled to allotments of tribal lands and property, and thereby the nations will lose several millions of dollars in lands and tribal property unless immediate and vigorous steps be taken to defeat the claims of said persons jointly by the Choctaw and Chickasaw nations: Therefore

Be it enacted by the general council of the Choctaw Nation assembled, That the principal chief of the Choctaw Nation is hereby authorized to enter into a contract, jointly with the governor of the Chickasaw Nation, with some suitable person or persons to defeat the claims of said "court claimants" under the alleged judgments: *Provided, however,* That the compensation to be paid

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under said contract shall be upon the basis of a per centum of the value of the lands and property which said persons would otherwise receive under said alleged judgments, to be fixed in said contract by the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation, who shall also, for the purposes of ascertaining the amount to be paid under said contract, agree as to the value of the lands and property which each one of the said persons would receive: *And provided further*, That such compensation shall be contingent upon the defeat of such persons and the protection of the tribes therefrom; and this act shall take effect and be in force from and after its passage and approval.

Passed the house January 7, 1901.

Passed the senate January 5, 1901.

Approved January 7, 1901.

G. W. DUKES,
Principal Chief, Choctaw Nation.

ACT OF THE CHICKASAW LEGISLATURE.

An act to provide for the protection of the Choctaws and Chickasaws from the citizenship claims of those persons known as "court claimants."

Whereas many persons who are not Choctaw and Chickasaw Indians have fraudulently procured what purport to be judgments of the United States court in the Indian Territory declaring them to be members of the tribes and entitled to enrollment and distribution of tribal property, and thereby said tribes will lose several millions of dollars in lands and tribal property unless immediate steps be taken to defeat the claims of said persons, jointly with the Choctaws: Therefore

Be it enacted by the legislature of the Chickasaw Nation, That the governor of the Chickasaw Nation is hereby authorized to enter into contract, jointly with the principal chief of the Choctaw Nation, with some suitable person or persons to defeat the claims of said "court claimants," under said alleged judgments, and before allotment and distribution of tribal property, as provided by treaty, the proper officer of the United States Government having the same in charge shall set apart so much of the funds of the Chickasaws as may be sufficient to pay the proper portion of the Chickasaws, or one-fourth of the aggregate compensation which may be due under said contract authorized to be entered into under this act, and to pay the same as may be provided in said contract: *Provided*, That the compensation to be paid under said contract shall be a per centum of the value of the lands and tribal property which said "court claimants" would have received in the event of allotment and distribution of tribal property to them, to be fixed in said contract by the governor of the Chickasaw Nation and the principal chief of the Choctaw Nation, who shall also, for the purpose of ascertaining the aggregate amount due under said contract, agree as to the value of the lands and tribal property which each of said "court claimants" would receive in the event of allotment and distribution of tribal property to them: *And provided further*, That such compensation shall be contingent upon the defeat of the claims of such persons and the protection of the tribes therefrom.

Passed the House January 10, 1901.

Passed the Senate January 10, 1901.

Approved January 10, 1901.

D. H. JOHNSON,
Governor Chickasaw Nation.

Third. That the particular purpose for which this contract is entered into is to secure the services of the said Mansfield, McMurray & Cornish, parties of the second part, in preventing allotment or distribution of tribal property to those persons who claim right thereto under alleged judgments of the United States court in Indian Territory, rendered under act of Congress approved June 10, 1896, and known as "court claimants."

Fourth. That the special thing to be done under this contract by the said Mansfield, McMurray & Cornish, parties of the second part, is to render their services, to the end that allotment or distribution of tribal property may be refused such so-called "court claimants."

Fifth. That the basis of the services herein contracted for by the said Choctaw and Chickasaw nations, parties of the first part, and agreed to be performed by the said Mansfield, McMurray & Cornish, parties of the second part, is the claim to allotment or distribution of tribal property under said alleged judgments by said so-called "court claimants."

Sixth. (a) That the compensation of the said Mansfield, McMurray & Cornish, parties of the second part, under this contract shall be 9 per cent of the value of the shares of tribal property which such of said so-called "court claimants," as hereinafter defined, as may be refused allotment or distribution of tribal property would have received in the event of allotment or distribution thereof to them, whether for past or future services to this end; and that for the purposes of this contract it is agreed that the share of tribal property a "court claimant" would receive, in the event of allotment and distribution thereof to him, is of the value of \$4,800, and is hereby so fixed; and the term "court claimant," as herein used, shall include all persons whose names were embraced in what purported to be judgments of the United States courts in Indian Territory admitting them to Choctaw and Chickasaw citizenship under the said act of Congress approved June 10, 1896, and all persons who have been born to or become intermarried with them and who are claiming rights thereby.

(b) That such compensation shall be due and payable by the Treasurer of the United States, at the Treasury, out of any funds of the Choctaws and Chickasaws in the hands of the Government, in proportion of three-fourths out of Choctaw and one-fourth out of Chickasaw funds, whenever the roll of those persons entitled to allotment and distribution of tribal property shall become final.

(c) That compensation shall be ascertained and paid in the following manner: That the said Mansfield, McMurray & Cornish shall present to the Secretary of the Interior a true and correct list of such so-called "court claimants," as herein defined, and he shall, by comparing said list with said final allotment roll, ascertain the number of such "court claimants" refused allotment or distribution of tribal property, and also the aggregate value of the shares of tribal property which such persons would have received in the event of allotment and distribution thereof to them, by applying to such number of persons the value of a share of tribal property as herein fixed, of which aggregate sum the said Mansfield, McMurray & Cornish, parties of the second part, shall be entitled to 9 per centum. The Secretary of the Interior shall certify the amount thus due the said Mansfield, McMurray & Cornish under this contract, and upon such certificate payment shall be made as herein provided.

Seventh. That the fixed time for which this contract is to run is five years from March 4, 1901.

In testimony whereof we have hereunto set our hands at Sherman, Tex., on this January 17, 1901.

GILBERT DUKES,
*Principal Chief, Choctaw Nation,
on the part of the Choctaw Nation.*

DOUGLAS H. JOHNSON,
*Governor of the Chickasaw Nation,
on the part of the Chickasaw Nation,
Parties of the First Part.*

MANSFIELD, McMURRAY & CORNISH,
Parties of the Second Part.

On the 3d day of March, 1903, an act of Congress was approved entitled "An act making appropriation for the current and contingent expenses of the Indian Departments and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," in which it is provided "that upon the final determination of cases within the jurisdiction of said citizenship court, said court may fix reasonable compensation to the attorneys employed by contract, dated January seventeenth, nineteen hundred and one, with the Choctaw and Chickasaw nations, and such determination shall be made irrespective of the rate fixed in said contract between said attorneys and said nations, or either of them, unless the same shall have received the approval of the Secretary of the Interior. And upon the final determination of said cases by said citizenship court the Treasurer of the United States is hereby directed to pay to said attorneys on the warrant or warrants drawn by the Secretary of the Interior the amount of such compensation out of any funds in the Treasury belonging to said nations."

It will be seen by reference to the above contract that the Choctaw and Chickasaw nations through their respective representatives agreed to pay to the attorneys mentioned in said contract "9 per centum as a compensation for

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their services of the value of the shares of the tribal property which such persons whose names were embraced in what purported to be judgments of the United States courts in the Indian Territory admitting them to Choctaw and Chickasaw citizenship, under the act of Congress approved June 10, 1896, and known as 'court claimants,' and all persons who have been born or become intermarried with them and who are claiming rights thereby."

There were 263 cases transferred to this court, involving the right of 3,403 persons to citizenship in the Choctaw and Chickasaw nations. Of this number 156 have been admitted to citizenship by this court and 2,798 persons denied citizenship, and 449 persons whose cases were dismissed for want of jurisdiction. Two thousand two hundred and ninety persons who had their cases transferred to this court are included in the list of 3,403 persons mentioned heretofore who had obtained judgments of the United States courts for the southern and central districts of the Indian Territory admitting them and each of them to citizenship under the act of June 10, 1896; in addition to this number there are 211 persons who were in possession of judgments of said courts obtained under said act of June 10, 1896, and whose judgments were declared void by this court in the "test suit" provided for in section 31 of an act of Congress approved July 1, 1902, and who did not have their cases transferred to this court under section 32 of the act of Congress approved July 1, 1902, who had been denied citizenship by the United States courts for the southern and central districts of the Indian Territory under the act of Congress approved June 10, 1896. The attorneys mentioned in said contract have furnished a list of 669 persons who have been born to or become intermarried with persons who had favorable judgments of the United States courts under the act of Congress approved June 10, 1896, and who had been denied citizenship by the Commission to the Five Civilized Tribes by reason of the judgment of this court in declaring void the judgment held by those with whom they had intermarried or were born of.

The attorneys contend that they are entitled to compensation at 9 per cent on the value of the shares of 2,290 persons who had favorable judgments of the United States court for the Indian Territory and who had their cases transferred to this court and were here denied citizenship, as well as a compensation of 9 per cent on the value of the share of 211 persons who had favorable judgments of the United States court, and whose judgments were declared void by this court in the decision thereof in what is known as the "test suit" and who failed to have their cases transferred to this court; also a like per cent on the value of the shares of 669 persons who have been born to or become intermarried with the persons known as "court claimants."

In other words, the attorneys mentioned in the contract claim and insist that this contract should be approved by this court and that this court should allow them as a compensation for their services 9 per cent of the value of 3,710 shares in the tribal property of the Choctaw and Chickasaw tribes of Indians, as this is the correct number of persons who have been kept from participating in the distribution of the tribal property of these two tribes by reason of their efforts under the contract dated January 17, 1901. From the evidence in this proceeding a share in the tribal property belonging to the Choctaw and Chickasaw nations is worth the sum of \$5,000, and at the time this contract was entered into on the 17th day of January, 1901, there were 250 persons in possession of judgments of the United States court in the Indian Territory declaring each of them members of the Choctaw and Chickasaw nations, whose judgments have been by this court set aside and vacated and thereby their right to citizenship denied; that there are 669 persons who have been born to or become intermarried with persons who possessed favorable judgments known as "court claimants;" that all the services contracted for to be performed under the contract bearing date of January 17, 1901, have been performed by the attorneys, Mansfield, McMurray & Cornish; that these services have been performed with intelligence, promptness, and fidelity toward the Choctaw and Chickasaw Indians; that there has been a final determination of all the cases within the jurisdiction of this court; that said attorneys have completed their services under said contract; and at the time said contract was entered into the persons known as "court claimants" were in possession of judgments that then seemed to be absolute and that there was no provision in the law at that time to retry the cases. The evidence shows that there has been saved to the Choctaw and Chickasaw nations in money and property amounting in the aggregate to the sum of \$15,850,000 by reason of the efforts of said attorneys.

The evidence further shows that it was this firm of lawyers who brought these matters to the attention of the lawmaking powers and Departments of the Government and impressed upon Congress and the Departments the great wrong

which had been done the nations by placing the persons known as "court claimants" upon the rolls and thereby allowing a great number of persons to participate in the distribution of the property belonging to these tribes who were not entitled to such benefits. The evidence further shows that it was through the persistence of these attorneys that legislation was secured that gave the nations the right of a retrial of these cases, and this was done at the personal expense of this firm, and that they have never been paid and do not claim any right to be reimbursed in the way of expenses for sums thus expended; that at each session of Congress since this contract was entered into, up to the time of the passage of the act of Congress approved July 1, 1902, some member of this firm was in Washington endeavoring to impress upon the lawmaking powers and the Departments the justness of the claim of the Choctaw and Chickasaw Indians and insisting that legislation be enacted that would allow the citizenship cases to be retired. After the passage of the act of Congress approved July 1, 1902, creating this court, and the organization of this court for the trial of these cases, the attorneys have tried them all in the most prompt manner, in the face of the most bitter opposition, going into nearly all the Southern States seeking and securing testimony that proved beyond all doubt that many of the persons known as "court claimants" had no rights whatever as Indians, but in a large measure were white people who had secured judgments by fraud and perjury.

If the per cent agreed on in the contract be adhered to, the compensation to the attorneys would be \$1,426,500.

A number of witnesses have testified in this matter before this court to the effect that the provisions of said contract should be carried out, and that the amount claimed by said attorneys was not excessive for the services performed, a number of them placing a reasonable compensation much higher than is designated in the contract.

It is true that at the time this contract was entered into the chances of recovery were exceedingly remote, and if the attorneys had not succeeded they would not have received any compensation for their labor whatever.

As contained in this statement heretofore, there were 508 persons whose cases were transferred to this court under section 32. These cases were looked after with as much diligence as any case before court, notwithstanding the fact the contract did not cover this class of cases. The principal chief of the Choctaw Nation and the governor of the Chickasaw Nation have filed statements with this court insisting that the provisions of the contract be carried out and that the attorneys be allowed the compensation agreed upon.

So the question is, What is a reasonable compensation for the services rendered? In our opinion, the compensation fixed by the contract would be excessive, but the sum of \$750,000 would be a reasonable compensation and should be allowed the firm of Mansfield, McMurray & Cornish for all services connected with citizenship matters under the contract dated January 17, 1901, and in lieu of all expenses save and except such as are provided for by law, as set out in section 33 of the act of Congress approved July 1, 1902, and said amount is hereby fixed and allowed as a reasonable compensation to said attorneys in this behalf.

In stating that the sum of 9 per cent as set out in the contract is excessive we do not mean to be understood as finding any bad faith upon the part of said attorneys in getting such a contract, but simply mean to say that such a per cent as applied to the services performed is above what we now think a reasonable fee for the services performed by said attorneys, and the great amount of benefits derived and the very large amount of money and property recovered, when if, as a matter of fact, a less amount had been recovered, a greater per cent might have been proper for us to allow.

SPENCER B. ADAMS,
Chief Judge.

WALTER L. WEAVER,
Associate Judge.

HENRY S. FOOTE,
Associate Judge.

Mr. BALLINGER. Now, I hope that I have made the provisions of the contract, the manner in which that legislation was procured, and the manner in which these judgments were procured by that citizenship court reasonably clear to the committee.

Mr. MORSE. Pardon me. What is the remedy sought in this bill No. 15649?

Mr. BALLINGER. This bill proposes to extend to about 10,000 people who have been denied their rights, admittedly through error of law, fraud, and gross mistake of facts, the right freely enjoyed by every citizen and noncitizen Indian within the limits of our country, excepting only the members of the Five Civilized Tribes, to go into a Federal court and have his or her case heard and determined in open court, with notice to the world, and to have judgment rendered by that court for or against him.

Mr. MORSE. They never had their day in court?

Mr. BALLINGER. They have never been heard in a constitutional court in all their lives. Some of these people were heard before the United States district court of the Indian Territory, and the judgments of those courts were affirmed by the Supreme Court of the United States. They procured judgments in those courts, with notice to the world, and this Commission that I am talking about, in the secret recesses of its apartments down there, struck down and annulled every judgment of the United States district court.

This will be the first time that a constitutional court has had an opportunity to inquire into the rights of these people. Heretofore their claims have been determined upon a question of citizenship. In this country and in this estate rights are not dependent upon citizenship. Under the grant every person who was a member of the Choctaw community in 1830, or who was a descendant of such member, had a vested right in that common property at his birth, so that his rights could in no way be dependent upon a question of citizenship.

Mr. MORSE. Pardon me once more. How many are there?

Mr. BALLINGER. The firm of Ballinger & Lee, our firm, represents to-day 8,000 of these claimants. There are probably 12,000 or 15,000 persons who claim that they have been denied their rights and who have never had opportunity to be heard in court.

Mr. MORSE. I hope you will pardon me for being so persistent, but—

Mr. BALLINGER. I appreciate the interruption, as it indicates your interest.

Mr. MORSE. Why did they not go into the district courts, if they had the right to, prior to the time of the creation of this Commission?

Mr. BALLINGER. If you please, all of these people where judgments had been adversely rendered in their cases went into the United States district courts on appeal and there procured judgments. In the great majority of cases the Commission had not acted upon them. They did not know whether their rights had been denied or not, and therefore it was impossible for them to go into that court under the provisions of that act. The great majority of these people were enrolled under subsequent acts of Congress, the act of 1898 particularly. Under the act of 1896 the tribes had not recognized the right of the Government to interfere in their affairs.

Mr. MORSE. I see.

Mr. BALLINGER. Now, Mr. Chairman, as I endeavored to point out to you the other day, the judgments of that citizenship court—it is alleged, and there is abundant evidence to sustain that allegation—

were procured from that court by fraud, by open, notorious bribery of two members of that court.

Mr. McGUIRE. How many members of that court were there?

Mr. BALLINGER. Three.

Mr. McGUIRE. There were only three present who constituted the citizenship court, which court tried and determined the rights of all these parties to be enrolled? Is that true?

Mr. BALLINGER. Yes, sir. That is, all these persons who had secured judgments in the United States district courts. The jurisdiction of this legislative commission did not run to anything else except the power to review, revise, and annul the judgments of the United States district courts, which had been affirmed by the Supreme Court of the United States, and then try *de novo* all cases heard and determined by the United States district courts.

Mr. MORSE. Pardon me just a moment. You say that a great many of these judgments were procured by open, notorious bribery. Was there anything done to punish the members of this court for bribery?

Mr. BALLINGER. The members of this Choctaw and Chickasaw citizenship court?

Mr. MORSE. Yes.

Mr. BALLINGER. If you please, sir, the attorneys who bribed the members of that court, evidence of which has been in the possession of the Secretary of the Interior for at least ninety days now, and no action has been taken by the Secretary of the Interior, although the time is rapidly expiring in which they can be indicted—that firm of attorneys were indicted, not for this particular offense, but for a similar offense, the indictment being returned at Ardmore in the year 1905 by a Federal grand jury. That indictment was never tried. The United States attorney who attempted to prosecute those parties, and who refused in response to orders from the Attorney-General of the United States to dismiss the indictments, was summarily removed from office. Another United States attorney on the 14th day of November, 1907, in response to a telegraphic order from the Attorney-General of the United States, went into court and dismissed these indictments, and the Attorney-General of the United States said in his telegram to that officer—and I think I can quote the exact words, for I was in the office of the United States attorney when that telegram was received, and I saw it with my own eyes:

Be sure and see that the indictments against Mansfield, McMurray, and Cornish are dismissed before the Territorial courts pass out of existence and the new State courts come into being.

Is it any wonder that indictments were not returned against members of this citizenship court, and against the attorneys for bribing the members of this citizenship court, when indictments good on their face were dismissed by the order of the Attorney-General of the United States against these attorneys, and they were never permitted to bring these guilty men before the bar of justice or to trial?

These facts are all sustained by the record; and one word more, if you want to hear it [addressing Mr. Morse]: The other day, when before this committee, I stated that every roll of the citizens of the Choctaw and Chickasaw nations made by the Government officers is saturated with fraud. One officer of the United States, while actually in the employ of the Federal Government, went into the office of Mans-

field, McMurray & Cornish, these same attorneys, and there remained for one month preparing cases against these applicants, and the next month passed back into the Commission, and there, in the name of the United States and for and on behalf of the Commission, passed upon and adjudicated and determined the rights of the poor devils whose cases he had briefed against them when in the office of these attorneys.

Mr. McGUIRE. Do you mean to say that party was a member of the citizenship court?

Mr. BALLINGER. That party was William O. Beall, the secretary of the Commission to the Five Civilized Tribes. I want to read here an extract from his testimony in this case. There is the record of his investigation upon which he was dismissed from the service, and which resulted also in the resignation, if not the dismissal, of Tams Bixby. It is Senate Document No. 357, Fifty-ninth Congress, second session. Mr. Beall was answering under oath with reference to the hearings had in the cases of claimants [reads]:

Q. Now, Mr. Beall, I want to ask you if you have at any time in the hearing of any cases ever quoted a provision from a bill pending in Congress which had not become a law for the purpose of determining the rights of the applicants?—
A. Yes, sir.

Q. Can you state in what case?—A. I couldn't now. In a great number of cases.

Think of adjudicating the rights of these people under bills pending in Congress that were not laws and never became laws, and depriving them of their property in that way! Mr. Chairman, history does not recall a more infamous transaction than that which permeates and runs through the adjudication of all these cases.

That is only one instance of the fraud perpetrated by administrative officers on these people. There is other evidence of the fraud that runs through these cases. Another evidence of the fraud practiced by the Indian officials and the attorneys in order to defeat the rights of claimants is found in the following notice, which was sent out broadcast to claimants. Appointments had been made in the Choctaw and Chickasaw nations for the examination of these people. Receiving the following notice from the attorneys of the nations, they did not appear at the appointed places, as they so advise counsel, and in many instances judgments by default were entered by reason of their failure to so appear, and it was held by the Commission that their claims were therefore barred by their failure to appear at the appointed places and times. Here is the actual notice sent to them [reads]:

SOUTH MCALESTER, IND. T.,
November 10, 1900.

_____,
Durant, Ind. T.:

You are hereby advised, in compliance with the direction of the Commission to the Five Civilized Tribes, that the Choctaw and Chickasaw nations object to your enrollment upon the ground: No right to enrollment.

You are further advised that no testimony on behalf of the Choctaw and Chickasaw nations will be taken at the appointment of the Commission to the Five Civilized Tribes at Atoka, Ind. T., beginning December 3, 1900; and that it will not be necessary for you to appear at that time and place unless you desire to do so in your own behalf.

THE CHOCTAW AND CHICKASAW NATIONS,
By MANSFIELD, McMURRAY & CORNISH,
Attorneys.

Those people accepted that as a notice that their cases would not be heard. When that time arrived, the attorneys for the Choctaw and Chickasaw nations were on hand, the cases were called, and judgments were taken by default, and the names of those persons forever stricken from the tribal rolls.

But the Secretary of the Interior and the Commissioner of Indian Affairs can not shirk responsibility with reference to the adjudication of these cases, and I am glad that an officer of the Indian Bureau is here this morning, that he may make defense, if he can. Every technicality and subterfuge known to the officers of the Department of the Interior, including the Commissioner of Indian Affairs, was employed by the offices of the Secretary of the Interior, the Commissioner of Indian Affairs, and the Commission to the Five Civilized Tribes to defeat the rights of claimants and thus deprive them of their legal property rights.

Mr. MORSE. What are you reading from?

Mr. BALLINGER. From my own notes. This is a statement that Mr. Ward, who passed upon these cases, will not deny. The assistant attorney for the Department of the Interior, whose office has been the one haven of refuge for claimants, and who have uniformly secured a reasonable adjudication of their rights when the Secretary of the Interior was gracious enough to permit them to have their cases referred to that office for a legal opinion, rendered a line of legal opinions which were approved by the Secretary of the Interior, and thereby became the laws of the Department in the adjudication of cases of claimants. These laws left no room to the administrative officers to deny the rights of claimants in thousands of cases where they were subsequently denied. In order to circumvent these decisions an opinion was prepared by an employee of the legal department of the Indian Office who was insane at the time he wrote the opinion, and who was, within a few days thereafter, adjudged by the supreme court of the District of Columbia to be insane, and by its decree incarcerated in St. Elizabeth Insane Asylum across the river, and who subsequently died in the insane asylum.

This decision, prepared by this lunatic, was written in a case arising from the Cherokee Nation, where different laws governed the enrollment of applicants. This lunatic decided questions not in the record of that case and not before the Department for determination. This decision rendered by this lunatic was pro forma affirmed by the Commissioner of Indian Affairs and thereafter pro forma affirmed by the Secretary of the Interior.

Immediately upon the affirmation of this decision by the Secretary the officers of the Indian Territory division of the Secretary's Office, the officers of the Indian Bureau, and the officers of the Commission to the Five Civilized Tribes seized upon this decision in order to circumvent the decisions rendered by the legal department. In practically every decision denying the rights of claimants rendered by the Commissioners to the Five Civilized Tribes, the Commissioner of Indian Affairs, and the Secretary of the Interior, from that day until the jurisdiction of all these officers ceased and terminated on the 4th day of March, 1907, by operation of law, the decision of this lunatic was invoked and referred to in the decision rendered in the case as "Departmental letter of May 25, 1906, I. T. D., 9,114—1906."

I now pause to ask Mr. Ward, because he has charge of that, whether that statement is true or false.

Mr. WARD. What case is it? I did not have charge of it.

Mr. BALLINGER. That is the case of Laura E. Akin.

Mr. WARD. I could not tell without looking up the record.

Mr. BALLINGER. Was not that case written by—I will not mention his name, because he is dead—M. M. M.? Do you not know who that man was?

Mr. WARD. Yes.

Mr. BALLINGER. Was he not taken from your office by order of the supreme court of the District of Columbia and incarcerated in the insane asylum across the river?

Mr. WARD. He was not.

Mr. BALLINGER. Was he not incarcerated?

Mr. WARD. He was not taken from our office, but from his home. He had been sick at his home for two weeks.

Mr. BALLINGER. He died in the insane asylum?

Mr. WARD. He did.

Mr. McGUIRE. Mr. Ballinger, you are reading from manuscript there, and part of this you went over the other day. Mr. Stephens and myself have heard it, and as it is manuscript, unless Mr. Morse wants to hear it further along that line, I do not suppose it will be necessary to do more than simply embody it in the record.

Mr. BALLINGER. I think that would be sufficient.

Mr. MORSE. I think that would be preferable,

Mr. McGUIRE. You have occupied about forty minutes now.

Mr. BALLINGER. I want, before I close, to show to the members of this committee pictures of some of the people whose rights have been denied [submitting photographs]. I would like you to see with your own eyes what kind of people these are who have been denied their rights. I expected to have photographs here of several hundred of them, but these are all that have come at the present time. These people are held to be negroes and white men by the Commission.

Mr. McGUIRE. You hardly expect that we are expert enough to tell from these photographs, do you, Mr. Ballinger?

Mr. BALLINGER. Those photographs bear all the impress of full-blood Indians.

(The following additional matter was submitted by Mr. Ballinger under leave to print:)

In the annual report of the Secretary of the Interior for the year ending June 30, 1907, appears the following paragraph with reference to the adjudication of the rights of claimants to share in the tribal property of the Choctaws and Chickasaws:

Requests have been presented and doubtless efforts will be made to reopen some if not all of these rolls, but it is to be hoped that such action will not be taken. Without doubt there are persons on the rolls who are not entitled to be there, and there are persons not on the rolls whose names should be there, but after the years of painstaking inquiry and determination made by the citizenship court, by the Commissioner to the Five Civilized Tribes, and finally by the Secretary of the Interior, it is believed that the cases of injustice or mistake are too few to justify an action that would surely result in thousands of claims being presented for readjudication.

What is this the Secretary says: "Without doubt there are persons on the rolls who are not entitled to be there, and there are persons not on the rolls whose names should be there;" and then adds, "but

after the years of painstaking inquiry and determination made by the citizenship court," which court it is alleged and generally believed was composed of at least two of the most corrupt scoundrels that ever sat as members of any court or commission and whose infamy was known to the Secretary when this report was written; and he then adds, "by the Commission to the Five Civilized Tribes," the members of which ignored and disregarded both the mandate of the statute and the instructions of the Department in order to defeat the rights of honest claimants, and permitted its officials to accept employment from the firm of attorneys employed to defeat the rights of honest claimants while actually in the employ of the Government, and who while in the employ of that firm of attorneys briefed cases against applicants, and then returned to the Commission and passed upon, in an official capacity, the very cases he had prepared and briefed while in the employ of said attorneys, and who, in order to defeat the rights of honest claimants, suppressed the records in their cases, covered up the evidence of their rights and deceived applicants by false and misleading representations, all of which facts were matters of public record and well known to the Secretary when this report was written; and lastly the Secretary adds, "and finally by the Secretary of the Interior," evidently overlooking the official reports to the Senate, wherein his predecessor advised the Senate that between February 25 and March 4, 1907—exactly one week—the Secretary examined and decided 2,023 cases, involving the rights of upward of 10,000 claimants: and then the Secretary adds, "it is believed that the cases of injustice or mistake are too few to justify an examination that would result in thousands of claims being presented for readjudication."

Is this not a remarkable statement? Is it not upon its face so inconsistent, contradictory, and illogical that the recommendation can not be accepted or followed?

This "painstaking inquiry and determination made by the citizenship court, by the Commissioner to the Five Civilized Tribes, and finally by the Secretary of the Interior," which the Secretary assigns as a valid reason why these claimants should not be heard (for they have never in reality ever had their cases heard and determined), undoubtedly relates to the pains taken by the Commission to the Five Civilized Tribes not to make a record of the actual testimony taken in any case while it was in the field examining claimants in 1898 and 1899; to the adjudication and determination of the rights of claimants under provisions of bills pending in Congress which were not then and never became laws: to the pains taken by the Commission to suppress the records in the cases of claimants in order to prevent the true facts from becoming known to the Secretary of the Interior; to the pains taken by the citizenship court to defeat the rights of honest claimants in order to enhance the individual fortunes of members of that court; to the pains taken by the Secretary of the Interior, when passing upon these cases finally, when more than 2,000 cases were examined and decided by him in less than one week, involving the rights of more than 10,000 claimants.

In substance the Secretary says in this official document that to purge the rolls of fraudulent names or to permit rightful claimants who have been denied their property rights to present their claims in open court and have them adjudicated by a judicial tribunal will

involve so much labor and be so much trouble that he prefers that their claims should not be heard, although it is well known that claimants have never in fact had any hearing and have been deprived of their property through deception and fraud.

Would not an administrator of an estate who would dare make such a report to a court be summarily removed? Would any court in this land tolerate such brazen; culpable neglect of duty? Will Congress permit these people to be denied their property because of the corruption and criminal negligence of its agents and officers? Could anything be more binding upon the United States Government than an impartial, fair, and equitable distribution of these trust properties among the legal and equitable beneficiaries? Is it not a sacred duty which the National Government owes to these people to see that each and every one of them is given his share of the property? Can any reason be assigned why those who have been erroneously denied their rights by administrative officers should not have an opportunity to have their claims heard and determined by a competent tribunal? Is the Secretary of the Interior—charged by law with the administration of these estates—relieved of responsibility because the outrages perpetrated upon these people by administrative officers occurred under the administration of his predecessor? Is not Secretary Garfield the residuary legatee of all the errors committed and the wrongs inflicted upon these people under the administration of his predecessor? By what known rule of law or principle of equity can he now, as administrator of these estates, oppose, resist, or refuse a reexamination into every case of every person who claims to have been deprived of his rights through errors of law, fraud, or gross mistake of fact committed by administrative officers in the past?

These estates are now practically intact. Every fraudulent allotment made can now be canceled and every rightful claimant given his share of the property. In the Choctaw and Chickasaw nations there still remain unallotted 4,525,739 acres of land, including the 1,386,720 acres withdrawn by order of the Secretary of the Interior, contrary to law, for the purpose of establishing a forest or a game preserve.

REAL INDIANS ARE NOT OBJECTING TO RECEIVING THEIR PROPERTY RIGHTS.

It is not the full blood Choctaws and Chickasaws that are objecting to claimants receiving their property rights. It is the mixed breed, in most cases one thirty-second or one sixty-fourth Indian blood, or the intermarried or adopted citizen, without one drop of Indian blood, who has been given a property right under acts of Congress or through favoritism extended by the administrative officers, in both cases without authority of law. It is from this class of people that the protests against claimants receiving their property come—the same designing class of people who held practically the entire trust estate for their exclusive use and benefit prior to the intervention of the Government of the United States, and who were directly responsible for the intervention by the United States in order to protect the rights of the great majority of the rightful beneficiaries under the trust.

Whatever may have been the real purpose of Congress in interfering in the affairs of the Choctaw and Chickasaw Indians—whether

it was the patriotic and laudable desire to administer upon this trust estate, so that every person who was in law, equity, and good conscience entitled to receive his individual share should receive it, or whether the intervention was for political and selfish purposes—certain it is that conditions in these nations are in an infinitely worse condition than before the intervention of the Federal Government. Before this intervention claimants were permitted to live upon their lands and to enjoy the improvements made thereon and the fruits of their labor. Under the criminal mismanagement of this estate by administrative officers of the Federal Government many of claimants have been driven from their homes in which they have lived all their lives; driven from the land they have cultivated for fifty years; their homes and all their improvements thereon, the result of the savings of years, given to white men—adopted or intermarried. In many instances the result of the labor of a family for a generation has been confiscated by the Federal Government and the property turned over to either a white intermarried or an adopted citizen or some worthless mixed breed, probably one sixty-fourth Indian blood, too indolent to ever erect a home in which to live.

ACTUAL CASE.

Let us illustrate this further by an actual case. A person of seven-eighths Choctaw blood, who was married to a woman of three-quarters Choctaw, was living in the home built by his grandfather on this trust property. He was one of that class of persons known as a "court-judgment citizen," as he, his wife, and their children had been decreed by judgment of the United States district court for the southern district of the Indian Territory to be a Choctaw Indian by blood and descent, and duly enrolled as such by the Commission. The judgment of the United States district court in his case had been vacated by the decision of that now famous legislative commission known as the "Choctaw-Chickasaw citizen court." Some time after the rendition of the decree of this legislative commission, Indian police were sent to his home to eject him from the land and home built by his grandfather, and in which he was born. They arrived at midnight during the latter part of November. It was a cold, inclement night, sleeting and raining. When these officers arrived his wife was in the throes of childbirth. They served notice on him that he must vacate his home that night. He pleaded with them not to enforce the order, as it was impossible to move his wife. The officers refused. Grabbing his rifle he attempted to shoot the Indian police. His wife pleaded with him not to commit such an act. Finally the Indian police agreed that he and his wife might remain until 5 o'clock the next morning. Shortly after daybreak the new-born child was wrapped in a blanket and the wife was laid in a lumber wagon and driven to a neighbor's house several miles distant. That home, with all the improvements placed upon it by his grandfather, his father, and himself, is now in the possession of an intermarried citizen who has no legal right to the property.

BLOOD RELATIVES OF CLAIMANTS CLAIMING THROUGH THE SAME COMMON ANCESTORS ON TRIBAL ROLLS AND CLAIMANTS DENIED ENROLLMENT.

These 10,000 claimants acquired their right to share in this trust property from the same common source from which the great majority of those who have been enrolled as blood citizens acquired their

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rights. In many instances the grandmother and grandfather, or grandmother or grandfather, or mother and father, or mother or father, or sisters and brothers, or sister or brother, or other blood relatives of claimants, have been enrolled and have received their individual share of this trust property. The certified records contained in volumes 1 and 2, Senate Report No. 5013, Fifty-ninth Congress, second session, show these to be incontestable facts.

CHILDREN OF SIGNERS OF TREATY OF 1830, UNDER WHICH GRANT WAS MADE, DENIED THEIR RIGHTS.

In other cases the children of the signers of the treaty of 1830, under which the grant was made, have been denied their rights, notwithstanding the fact that they have been residing in the Choctaw or Chickasaw nations for the last twenty-five years, as is evidenced by the following official document in the case of John T. Williams, a resident of Swink, Choctaw Nation, and who is the son of Ambrose Williams, who was one of the representatives of the Choctaw Nation who negotiated the treaty of 1830, and whose name appears thereon as one of the signers of that treaty.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, May 4, 1907.

JOHN T. WILLIAMS, Esq., *Swink, Ind. T.*

SIR: The Office is in receipt of three letters written by you, one addressed to the Attorney-General of the United States, one to the Department of the Interior, and one to this Office, relative to your enrollment as a citizen of the Choctaw Nation, and saying that you are going to have your rights as a citizen before you quit, and that you are going to appeal to the Supreme Court of the United States.

In reply, the Office can only repeat what it has told you heretofore, that it has no jurisdiction to consider any citizenship matter since the 4th of March, 1907, and that there is now no authority of law for placing the name of any person on any of the rolls of the Five Civilized Tribes in the Indian Territory.

There was no question in your case as to your Indian blood, and it was not denied by the Commissioner to the Five Civilized Tribes that you were a person of Indian blood. However, the possession of Indian blood was not enough under the law to justify your enrollment as a citizen of the Choctaw Nation. There are many persons of Indian blood who are not entitled to enrollment as citizens of the Five Civilized Tribes in the Indian Territory.

The Office sees no reason to object to your appeal to the Supreme Court of the United States, if you so desire.

Very respectfully,

C. F. LARRABEE, *Acting Commissioner.*

GRANTING OF RELIEF ASKED BY CLAIMANTS WILL NOT DISTURB TITLES IN THESE TRUST LANDS.

Claimants are not asking relief that will unsettle conditions in the Choctaw or Chickasaw nations. They are not asking to disturb titles to allotments heretofore made. They are asking merely the right, freely enjoyed by each and every one of the persons enrolled, to select from the unallotted lands allotments equal in value and extent to the allotments heretofore selected by those persons enrolled by the administrative officers. There is still remaining approximately 3,000,000 acres of unallotted lands, the common property of the Choctaws and Chickasaws, and from these unallotted lands claimants desire the right to select their allotments. Is it possible that although they are beneficiaries, equal with those persons who have been enrolled by the administrative officers, under the treaties and the grant and each and every act of Congress, that because of errors of law, fraud, and

gross mistake of fact committed by the administrative officers, they are to-day remediless? To assert that they are is to assert a proposition so monstrous that it can receive no sanction or recognition by a tribunal composed of honest men.

The following resolution was transmitted by the Senate Indian Committee to the Secretary of the Interior for report thereon:

[Senate Resolution No. 69. Sixtieth Congress, first session.]

Resolved, That the Secretary of the Interior be, and he is hereby, directed to transmit to the Senate the following records and information:

First. A list of the rolls which have been prepared since eighteen hundred and thirty of the Choctaw and Chickasaw Indians by Government officers, agents, or representatives, the designation of each of said rolls, the name of the person or persons who prepared each of said rolls and the year in which each of said rolls was made, and the purpose for which each of said rolls was made.

Second. A list of the rolls of the Choctaw and Chickasaw Indians prepared by the officials, representatives, agents, or individual members of the Choctaw and Chickasaw nations from eighteen hundred and eighty to nineteen hundred, inclusive, and now in the custody and possession of the Department or any bureau, division, or commission thereof or thereunder; the designation of each roll and by whom and in what year or years each of said rolls was prepared, and the purpose for which each of said rolls was made.

Third. Which of said rolls were in the custody and possession of the Commission to the Five Civilized Tribes and were used by said Commission in the preparation of the "final citizenship rolls" of the Choctaw and Chickasaw Indians.

Fourth. A full copy of the decision of Honorable Frank L. Campbell, Assistant Attorney-General of the United States, rendered under date of March twenty-fourth, nineteen hundred and five, in the case of Mary Elizabeth Martin, applicant for enrollment as a citizen of the Choctaw Nation.

Fifth. A copy of the report of the Commission to the Five Civilized Tribes, under date of January twenty-fourth, nineteen hundred and three, in the case of Bettie Lewis, respecting the authenticity and reliability of the rolls therein referred to, and which report is particularly referred to in the decision of the Assistant Attorney-General in the case of Mary Elizabeth Martin, rendered March twenty-fourth, nineteen hundred and five.

Sixth. A copy of the opinion of Honorable Willis J. Van Devanter, Assistant Attorney-General of the United States, rendered under date of March seventeenth, eighteen hundred and ninety-nine, as approved by the Acting Secretary of the Interior, Honorable Thomas Ryan, on March seventeenth, eighteen hundred and ninety-nine, for the guidance of the Commission and the Department in the preparation of the "final rolls of citizenship" of the Choctaws and Chickasaws.

Seventh. Whether the records of the Department and the Commission to the Five Civilized Tribes show that any person whose name appears on any tribal roll of the Choctaw and Chickasaw tribes, or his or her descendants, have been denied enrollment on the "final citizenship rolls" of said tribes and denied the right to share in the tribal property, and approximately how many have been so denied.

Eighth. A copy of the instructions prepared by Honorable W. A. Jones, Commissioner of Indian Affairs, under date of July twenty-fifth, eighteen hundred and ninety-nine, and approved by the Acting Secretary of the Interior, Honorable Thomas Ryan, August eighth, eighteen hundred and ninety-nine, prescribing rules and regulations for the guidance of the Commission to the Five Civilized Tribes in the examination of persons as to their right to enrollment on the final citizenship rolls of said tribes, appearing before said Commission under the provisions of the act approved June twenty-eighth, eighteen hundred and ninety-eight.

Ninth. A copy of the notice issued by the Commission to the Five Civilized Tribes under the act approved June twenty-eighth, eighteen hundred and ninety-eight, directing all persons claiming any rights in the Choctaw and Chickasaw nations to appear before said Commission at certain specified places and times for examination and identification.

Tenth. Whether the records in the custody and possession of the Department and the Commission to the Five Civilized Tribes show that all persons appearing before the Commission under the provisions of the act approved June

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twenty-eighth, eighteen hundred and ninety-eight, were examined by said Commission as to their Indian blood and descent under oath and their exact statements reduced to writing and made of record.

Eleventh. Whether the records in the possession and custody of the Department and the Commission to the Five Civilized Tribes show that persons of mixed Choctaw or Chickasaw Indian and negro blood appearing before said Commission under the provisions of the act approved June twenty-eighth, eighteen hundred and ninety-eight, were examined by said Commission under oath solely as to their negro blood and descent and their testimony reduced to writing and made of record.

Twelfth. Whether the records in the possession of the Department and the Commission to the Five Civilized Tribes show that any other class of persons excepting only persons of mixed Choctaw or Chickasaw Indian and negro blood, appearing before said Commission under the provisions of the act approved June twenty-eighth, eighteen hundred and ninety-eight, were examined under oath and their statements reduced to writing and made of record.

Thirteenth. Whether the records of the Department and the Commission show that persons of mixed Choctaw or Chickasaw Indian and negro blood have been enrolled as "freedmen" and denied enrollment as Indians, regardless of the quantum of their Indian blood.

Fourteenth. Whether the quantum of Choctaw or Chickasaw Indian blood was held by the Department to be material in the determination of the rights of persons of mixed Choctaw or Chickasaw Indian and white blood.

Fifteenth. The number of acres and the appraised value thereof of unselected and unallotted lands in the Choctaw and Chickasaw nations, respectively.

Sixteenth. Whether the order issued by the Honorable Ethan Allen Hitchcock, Secretary of the Interior, under date of December eighth, nineteen hundred and six, directing the Commission to suspend "all selections and the issuance of patents" to certain timber lands in the Choctaw and Chickasaw nations, has been rescinded in whole or in part.

The following report was made thereon by the Department:

DEPARTMENT OF THE INTERIOR,
Washington, February 26, 1908.

HON. MOSES E. CLAPP,

Chairman of Committee on Indian Affairs, United States Senate.

SIR: On January 28, 1908, the Department forwarded to the Commissioner to the Five Civilized Tribes copy of Senate resolution No. 69, calling for certain information and records relating to the enrollment of citizens of the Choctaw and Chickasaw nations.

The Department has received report of the 10th instant from J. G. Wright, Commissioner to the Five Civilized Tribes, covering all paragraphs of the resolution except Nos. 1, 4, 6, and 8, which have been covered by separate report from the Department.

On pages 3, 4, and 5 of Commissioner Wright's report information is given relating to various rolls and schedules of Choctaw citizens and freedmen, and the names of counties to which each roll or schedule refers are given, but nowhere in the report is there furnished a complete list of the tribal counties of the Choctaw Nation.

The Department believes that the following list covers all the tribal counties: Atoka, Blue, Boktukle, Cedar, Eagle, Gaines, Jacks Fork, Jackson, Klamitia, Nashoba, Red River, Sans Bois, Skullyville, Sugar Loaf, Tobuckay, Towson, and Wade.

By comparison of the information concerning the 1885 roll it will be seen that it does not contain the names of citizens located in Jackson County. The 1893 roll covers all the counties. The memorandum rolls of citizens by blood used in the compilation of the census roll of 1896 do not contain the names of the Indians in Gaines, Nashoba, Sans Bois, Tobuckay, or Wade counties. The memorandum rolls of the intermarried whites do not contain the names of the intermarried citizens in Cedar, Gaines, or Sans Bois counties. The memorandum rolls of freedmen fail to contain the names of those located in Atoka, Blue, Cedar, Gaines, Jacks Fork, Nashoba, Sans Bois, Sugar Loaf, or Tobuckay counties.

Commissioner Wright's report was made with reference to the period from 1880 to 1900, although the call of the Senate covers the period from 1830 to 1890, but he did give information concerning the Chickasaw roll of 1878. However,

it is the roll of 1878. The Commission, and its successor, the Commissioner, had no rolls antedating the year 1880.

Very respectfully,

FRANK PIERCE,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
Washington, February 21, 1908.

HON. MOSES E. CLAPP,

Chairman of Committee on Indian Affairs, United States Senate.

SIR: The Department has had under consideration Senate resolution No. 69, submitted by you on January 24, 1908. You ask for report thereon, including any explanatory matters that may be deemed advisable.

A copy of the resolution has been forwarded to the Commissioner to the Five Civilized Tribes at Muskogee, Okla., with instructions to report on such of the paragraphs thereof as more particularly relate to the work of the Commissioner, and when response is received from him full report will be made by the Department covering the information furnished by him and that which is requested from the records of the Department. However, I take this opportunity of reporting in advance regarding paragraphs I, IV, VI, and VIII of the resolution.

The rolls of Choctaw Indians, or schedules of such Indians, in effect and having the force of rolls that are in the possession of the Department are as follows:

(1) Register of Choctaw Indians claiming lands under the various provisions of the Choctaw treaty of 1830 and the supplement thereto, prepared by F. W. Armstrong in 1831. This register has been printed and is generally known as "Armstrong's Register." It appears in Volume VII (public Lands), American State Papers, pages 38 to 122, inclusive, making an aggregate of 85 pages. If printed in brevier type on pages of the size of ordinary Government reports of the present day it would make the same number of pages.

(2) In 1831, after the Choctaw lands had been surveyed, George W. Martin was sent to the ceded Choctaw country in Mississippi to make a record of those Choctaws who claimed land under the treaty and supplement, and of the description by Government survey of the lands claimed. He was engaged in this business until the year 1836, and his report is generally known as "Martin's Register." It also has been printed by the Government, and consists of 43 pages of the usual size of Government reports, printed in brevier type.

(3) Immediately after the ratification of the treaty of 1830 the Choctaw Indians began to complain that the agent had refused to make record of the desire of many of their number to remain east of the Mississippi and reap the benefits of the fourteenth article of that treaty. The proofs submitted to the War Department regarding the allegations of misconduct on the part of the agent were so convincing that Congress passed an act, approved March 3, 1837 (5 Stat. L. 180), providing for the appointment of commissioners to adjust the claims to land under the fourteenth article of the treaty. The time for which these commissioners were appointed having expired before the work was completed, Congress passed a further act, approved August 23, 1842 (5 Stat. L., 513), providing for the satisfaction of the claims arising under the fourteenth and nineteenth articles of the Choctaw treaty. Both of these acts provided for the issuance of scrip in lieu of the land which the Indians had lost in consequence of the misconduct of the agent or through other causes over which they had no control. Reports of these commissions were forwarded at different times and acted on by the Department, on the basis of which action scrip was issued. The records concerning the cases tried by the commissions have been printed and comprise 248 pages of Government report size, printed in brevier type.

(4) The general emigration of the Choctaws under the treaty was begun in 1831 and ended early in 1833. However, as years went on, Congress appropriated funds for the removal of those remaining east, and the emigration of the Indians was almost constantly in process until January, 1855, when it was discontinued. The records of the Indians transported west by the Government during all these years are in the Indian Office and consist of 161 written pages, which it is estimated would make 53 printed pages of the size above mentioned.

(5) Only half the scrip to which the Indians were entitled was delivered to them. Some of it was delivered west of the Mississippi and some east. The schedules showing these deliveries contain important genealogical infor-

mation, and for that reason the printing would be desirable in connection with the other schedules. However, very little credit can be given to the schedule compiled by J. H. Bowman, who delivered the scrip east of the Mississippi River, because he was charged with various frauds in its delivery, and the information contained in the departmental records is of such a character as to justify the strong suspicion that he allowed white men who desired to secure the scrip to bring before him Indians who impersonated the real owners and secured the certificates. These schedules consist of 135 pages, which, if printed in brevier, would probably make 45 pages.

(6) In 1855 Douglas H. Cooper, the agent of the Choctaws west, was directed to go to the Choctaw country in Mississippi, Louisiana, and Alabama and make a census of those members of the tribe still remaining in those States. Mr. Cooper visited the Choctaw country and made a roll, but from what the Indian Office has learned since concerning these Indians it is evident that his roll was very incomplete. However, it is good for what it contains. If printed, it would make not to exceed 3 pages.

(7) In 1856 the tribal authorities of the Choctaw Nation presented schedules of claims made by individual citizens of the nation for the expense of self-emigration and for losses of property incident to the removal. These schedules consist of 113 pages and if printed in brevier would probably make 37 pages.

The rolls of Chickasaws are as follows:

(1) The emigration muster rolls, compiled in 1837 by A. M. M. Upshaw, consisting of 35 pages, which if printed would make probably 12 pages.

(2) The census made in 1839 by A. M. M. Upshaw, consisting of 45 pages, which if printed in brevier would make probably 15 pages.

(3) Book No. 13, covering reservation claims of the heads of Chickasaw families, consisting of 147 pages, which if printed in brevier would make probably 49 pages.

Copies of the papers covered by Paragraphs IV, VI, and VIII are inclosed.

Respectfully,

JAMES RUDOLPH GARFIELD,
Secretary.

DEPARTMENT OF THE INTERIOR,
COMMISSIONER TO THE FIVE CIVILIZED TRIBES,
Muskogee, Okla., February 10, 1908.

The COMMISSIONER OF INDIAN AFFAIRS.

SIR: Receipt is hereby acknowledged of Indian Office letter of January 28, 1908, inclosing a copy of Senate resolution No. 69 (60th Cong., 1st sess.), calling on the Secretary of the Interior for certain information and records relating to the enrollment of citizens of the Choctaw and Chickasaw nations. The call is divided under sixteen heads, and the most of these items relate to records in the possession of this office and business transacted by the Commission to the Five Civilized Tribes, and it is stated that it will, therefore, be necessary that this office respond to all parts of the call except paragraphs numbered 1, 4, 6, and 8.

In giving the list of the rolls that are in the possession of this office that were used by the Commission and the Commissioner to the Five Civilized Tribes in enrolling citizens and freedmen of the Choctaw and Chickasaw nations, it is desired that there be given a complete description of each roll, including the size of the page, the number of names or lines on each page, and the number of pages, together with an estimate of the number of pages it would make if printed in brevier.

Inasmuch as it is necessary that this information be furnished at as early a date as possible, this office is requested to make it special.

In compliance with the above instructions, I have the honor to submit the following report with reference to the several items embodied in Senate resolution No. 69, to which this office is directed to respond:

"11. A list of the rolls of Choctaw and Chickasaw Indians prepared by the officials, representatives, agents, or individual members of the Choctaw and Chickasaw nations from eighteen hundred and eighty to nineteen hundred, inclusive, and now in the custody and possession of the Department or any bureau, division, or commission thereof or thereunder; the designation of each roll and by whom and in what year or years each of said rolls was prepared, and the purpose for which each of said rolls was prepared."

There are now in the custody and the possession of the Commissioner to the Five Civilized Tribes the following rolls and memoranda of rolls which

appear to have been prepared by the officials, representatives, agents, or individual members of the Choctaw and Chickasaw nations, from 1880 to 1900, inclusive:

CHOCTAW NATION.

The 1885 census rolls for the counties of Wade, Towson, Sugar Loaf, Eagle, Tobucksy, Blue, Sans Bois, Boktuklo, Jacks Fork, Cedar, Skullyville, Gaines, Nashoba, Red River, Kiamitia, and Atoka. The pages of these rolls are 8 by 14 inches in size, 30 lines to a page, and the rolls contain, in all, a total of 572 pages, upon which are listed the names of Indians, whites, and freedmen. The purpose for which they were prepared is not known by this office.

The 1893 census rolls for the counties of Jackson, Eagle, Tobucksy, Sugar Loaf, Towson, Wade, Cedar, Skullyville, Jacks Fork, Boktuklo, Sans Bois, Kiamitia, Blue, Atoka, Red River, Nashoba, and Gaines, and also a list of those Choctaws residing in the Chickasaw district. The pages of these rolls are 8 by 14 inches in size, 15 lines to a page, and the rolls contain, in all, a total of 1,627 pages, upon which are listed the names of Indians. These rolls were prepared for the purpose of making the leased district payment.

The 1896 census roll (No. 1) for all the tribal counties of the Choctaw Nation, arranged alphabetically. This roll contains 480 pages, 14 by 20 inches in size, 50 lines to a page, and there are listed in this roll the names of 18,953 Indians, whites, and freedmen. This roll was prepared for the purpose of complying with the act of Congress approved June 10, 1896. (29 Stat. L., 321.)

The 1896 census roll (No. 2). This roll is practically a duplicate of the above roll, and was not furnished this office as an official roll.

Memorandum rolls, from which the 1896 census rolls were prepared, as follows:

List of the Indians for the following counties: Skullyville, Atoka, Jacks Fork, Red River, Kiamitia, Towson, Sugar Loaf, Cedar, Jackson, Eagle, Boktuklo, Blue, and those Chickasaws residing in the Choctaw Nation. List of whites for the following counties: Jackson, Kiamitia, Tobucksy, Jacks Fork, Skullyville, Blue, Wade, Boktuklo, Sugar Loaf, Eagle, Nashoba, Atoka, Red River, Towson, and those Chickasaws residing in the Choctaw Nation. List of freedmen for the following counties: Eagle, Skullyville, Kiamitia, Red River, Boktuklo, Wade, Jackson, and Towson.

The pages of these memorandum rolls are 7 by 12 inches in size and contain 1,021 pages, upon which are listed the names of 12,489 Indians, whites, and freedmen.

CHICKASAW NATION.

The 1893 Chickasaw pay roll (No. 1), in which the names are not listed by counties, the pages of which are 8 by 12 inches in size, 37 lines to a page, and the names of Indians and whites appear upon 141 pages of this roll. This roll was prepared for the purpose of making the leased-district payment.

The 1893 Chickasaw pay roll (No. 2), in which the names are not listed by counties, the pages of which are 8 by 14 inches in size, 40 lines to a page, and the names of Indians and whites appear upon 228 pages of this roll. This roll was prepared for the purpose of making the leased-district payment.

The 1893 Chickasaw Maytubby roll (No. 1), which is a manuscript roll and in which the names are not listed by counties, the pages of which are 8 by 12 inches in size, 26 lines to a page, and the names of Indians and whites appear upon 416 pages of this roll. This is a roll of Indians and whites of the Chickasaw Nation residing in the Choctaw Nation who received the 1893 leased-district payment to the Chickasaws.

The 1893 Chickasaw Maytubby roll (No. 2), which is a manuscript roll and in which the names are not listed by counties, the pages of which are 8 by 12 inches, 22 lines to a page, and the names of Indians and whites appear upon 5 pages of this roll. This is a roll of Indians and whites of the Chickasaw Nation residing in the Choctaw Nation who received the 1893 leased-district payment to the Chickasaws.

The 1896 Ieshatubby roll, which is a manuscript roll and in which the names are not listed by counties, the pages of which are 8 by 12 inches in size, 22 lines to the page, and the names of Indians and whites appear upon 5 pages of this roll. This is a roll of Indians and whites of the Chickasaw Nation residing in the Choctaw Nation who received the 1893 leased-district payment to Chickasaws.

The 1896 census roll for the counties of Panola, Pickens, Tishomingo, and Pontotoc, and of those Chickasaws residing in the first, second, and third districts of the Choctaw Nation. The pages of this roll are 8 by 12 inches in size

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and contain, in all, 97 pages, upon which are listed the names of 5,820 Indians and whites. This roll was made for the purpose of complying with the act of Congress approved June 10, 1896 (29 Stat. L., 321).

Memorandum roll for the counties of Panola, Pontotoc, Tishomingo, and Pickens, and of those Chickasaws residing in the first and second districts of the Choctaw Nation. The pages of this roll are 14 by 17 inches in size, 40 lines to a page, and the names of Indians and whites are listed upon 123 pages of this roll. This memorandum roll was used by the officials or representatives of the Chickasaw Nation in preparing the 1896 census roll.

FREEDMEN.

In addition to the above rolls of the Choctaw and Chickasaw nations there has been furnished this office a freedmen roll of three volumes (one volume each for the first, second, and third districts of the Choctaw Nation) of those freedmen who, in the year 1885, elected to receive the \$100 payment and remove from the Choctaw Nation. The pages of each volume are 8 by 14 inches in size, and the three volumes contain, in all, 105 names.

One volume for the first, second, and third districts of the Choctaw Nation, entitled "Freedmen Registration, Admitted," the pages of which are 8 by 14 inches in size, 34 lines to a page, and contain, in all, a total of 251 pages, upon which are listed the names of freedmen. None of these three lists is certified to, nor is there any date showing when said lists were compiled, but it is believed that they were prepared in the year 1885, the date when the lists of freedmen who elected to receive the \$100 payment and remove from the Choctaw Nation were prepared.

In addition to the rolls enumerated above there have been furnished this office, at various times, a number of miscellaneous rolls, lists, and papers upon which appear names of Indians, whites, and freedmen, but it is not shown that they were prepared between the years 1880 and 1900, inclusive.

The matter of furnishing an estimate of the number of pages, printed in brevier and of the same size as the page of a Government report, required to make a printed copy of all rolls and memoranda of rolls, and the cost thereof, will be discussed at the conclusion of this report.

"III. Which of said rolls were in the custody and possession of the Commission to the Five Civilized Tribes and were used by said Commission in the preparation of the 'final citizenship rolls' of the Choctaw and Chickasaw nations."

The following rolls were in the custody and possession of the Commission to the Five Civilized Tribes and were used by this office in the preparation of the final rolls of the Choctaw and Chickasaw nations, being the only rolls that were considered as official:

CHOCTAW NATION.

1885 census roll.
1893 leased district payment roll.
1896 census roll.

CHICKASAW NATION.

1878 annuity roll.
1893 leased district payment roll (Nos. 1 and 2).
Maytubby roll (Nos. 1 and 2).
Ieshatubby roll of Chickasaws residing in Choctaw Nation who drew the leased district money as Chickasaws.
1896 census roll.

No rolls of Chickasaw freedmen have ever been furnished the Commission or the Commissioner to the Five Civilized Tribes, and this office has always been advised that no rolls of the Chickasaw freedmen have ever been made under the direction of the Chickasaw tribal authorities.

The 1896 census roll of Choctaw freedmen was used in connection with the enrollment of Choctaw freedmen, but all freedmen who established that they were, at any time, slaves of a Choctaw or Chickasaw Indian or descendants of such slaves were enrolled without reference to the question of whether or not their names appeared on any rolls.

"V. A copy of the report of the Commission to the Five Civilized Tribes, under date of January twenty-fourth, nineteen hundred and three, in the case of Bettie Lewis, respecting the authenticity and the reliability of the rolls therein referred to, and which report is particularly referred to in the decision

of the Assistant Attorney-General in the case of Mary Elizabeth Martin, rendered March twenty-fourth, nineteen hundred and five."

The following is a copy, in full, of the above report:

"MUSKOGEE, IND. T., *January 24, 1903.*

"The SECRETARY OF THE INTERIOR.

"SIR: Receipt is hereby acknowledged of departmental communication of December 27, 1902 (I. T. D., 4703-1902 and 6496-1902), requesting attention to departmental letter of October 23, 1902, relative to the application of Bettie Lewis for enrollment as a citizen of the Choctaw Nation.

"The matter was first brought to the attention of the Department in the decision of the Commission under date of July 23, 1902, refusing the application made by Bettie Lewis for enrollment as a citizen by blood of the Choctaw Nation. In her testimony before the Commission at Atoka, Ind. T., June 7, 1900, Bettie Lewis stated that her father, Butler McGee, who had then been dead about fifteen years, was, during his lifetime, a recognized citizen by blood of the Choctaw Nation and a resident of Jacks Fork County.

"On August 12, 1902, the Department, upon the recommendation of the Acting Commissioner of Indian Affairs of August 2, 1902, requested the Commission to report whether the name of Butler McGee, the alleged father of Bettie Lewis, is found on any of the tribal rolls of the Choctaw Nation.

"In reply thereto the Commission, on August 28, 1902, advised the Department 'that the enrollment of the citizens of the Choctaw and Chickasaw nations, as now being made by this Commission, is upon the identification of the applicants from the 1893 leased district payment roll of the Choctaw and Chickasaw nations and the 1896 census roll of citizens of these two tribes,' and, further, 'no authenticated rolls of the citizens of the Choctaw and Chickasaw tribes have ever been furnished the Commission as a basis of enrollment, nor have any roll or rolls of the citizens of these two tribes ever been adopted or confirmed by the national council of the Choctaw Nation or the legislature of the Chickasaw Nation as authenticated rolls of citizenship,' and further, 'the Commission has not in its possession, nor has it any knowledge of any rolls of the citizens of the Choctaw and Chickasaw nations made during or prior to the year 1895,' and further, 'the request has heretofore on several occasions been made to the tribal authorities of the Choctaw and Chickasaw nations to furnish the Commission with any and all rolls and records of citizenship in the possession of the two tribes, but we have never been furnished with any roll or rolls of the citizens made prior to the leased district payment roll of 1893.'

"In reporting on the communication of the Commission of August 28, 1902, the Acting Commissioner of Indian Affairs, under date of October 21, 1902 (Land 51962-1902), after referring to acts of the national council of the Choctaw Nation and of the Chickasaw legislature, authorizing the preparation of rolls of citizenship, expresses the opinion that such tribal legislation clearly shows that 'there were censuses prepared and regular rolls of citizenship kept, and that the enrollment of citizens was one of the important functions of government in the Choctaw and Chickasaw nations for many years; that this being true, there must be numerous rolls of the citizens of the two tribes antedating the 1893 leased district payment roll of these two tribes.'

"The Acting Commissioner of Indian Affairs further expresses the opinion that the Commission should be instructed to again call upon the executives of the Choctaw and Chickasaw nations for such rolls made prior to 1893, and in case of failure upon their part to appeal to the United States court, in accordance with the provision of the act of Congress of June 28, 1898.

"In concluding the Acting Commissioner of Indian Affairs states as follows:

"This Office has examined and reported on a large number of cases of applicants for enrollment as citizens by blood of the Choctaw and Chickasaw nations and recommended that the applicants be rejected for enrollment on the presumption that statements by the Commission in those cases, of the general character of the statements in the two cases referred to herein, involved an exhaustive examination of the rolls of those two nations, and is now surprised and disappointed to learn that it was misled into believing that the examination had been thorough and complete. In other words, these recommendations and the action of the Department thereon were based on false premises, and many of the conclusions reached may have been consequently erroneous.

"This Office, in the light of the circumstances presented, recommends that the Bettie Lewis case, and all other rejected applications for citizenship in the Choctaw and Chickasaw nations be held for further consideration until the

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Commission is in a position to make a more thorough examination with reference to what the Choctaw and Chickasaw rolls actually do show.'

"This report of the Acting Commissioner of Indian Affairs was transmitted by the Department for consideration, report, and recommendation on October 23, 1902 (I. T. D., 6496-1902).

"The Commission has to report that from the inception of the work of the enrollment of the citizens of the Choctaw and Chickasaw nations every possible effort has been made to obtain from the tribal authorities of these two nations any rolls of citizenship that they might have in their possession. The first step taken in this direction was after the approval of the act of Congress on June 10, 1896, when request was made of the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation to furnish the Commission the last authenticated roll of citizens of these two tribes made prior to June 10, 1896, and all other rolls made subsequent thereto, with such copies of the acts of legislature and the national council of the two nations, the judgments of citizenship courts or Commission as may have been rendered since the date of the last authenticated rolls, admitting persons to citizenship in the Choctaw and Chickasaw nations, and such other records and documents as might be in any manner helpful to the commission in making rolls of the citizens of the two nations in accordance with the acts of Congress of June 10, 1896, and June 7, 1897.

"This request was made of the chief executive of the two tribes in communications under date of June 28, 1897. In reply thereto the principal chief of the Choctaw Nation, under date of July 10, 1897, advised the Commission:

"'It is absolutely impracticable for me to furnish a complete roll of the Choctaws, together with all persons admitted after June 10, 1896. I think, however, that I can furnish your Commission names of some parties that were fraudulently admitted, provided that you will extend my time for this work—say, about twenty days from the 2d of August.'

"The principal chief of the Choctaw Nation, on July 17, 1897, in reference to the rolls, advised this Commission as follows:

"'It will be impossible for me to furnish your Commission with the last authenticated roll made prior to June 10, 1896, as the time to prepare the roll is too brief. But the last revised roll made in accordance with the act of council (October, 1896) contains all the citizens of the Choctaws by blood, intermarriage, and adoption, and is about complete after about four months of labor, and will be furnished you at the time requested. I will add, however, that the law authorizing this last roll provided that the principal chief shall approve of and sign the roll before it becomes the recognized rolls of the citizens of the Choctaw. But I am satisfied that there are some names on the roll that have been registered through fraud or misrepresentation; I shall not approve of it until these cases are investigated. At the proper time I will furnish you a list of these names and of the witnesses.'

"On July 30, 1897, the principal chief advised the Commission of the forwarding by express of the revised roll of the Choctaw Nation containing the names of the citizens by blood, marriage, or adoption, and in this connection states as follows:

"'The law requiring the taking of the roll required it to be approved by the principal chief, but as there are names on the roll that I am satisfied ought not to be there, I will not approve of the rolls until these cases are investigated. I will furnish you in a few days all the evidence I can bearing on these cases.'

"Under date of August 13, 1897, the Commission addressed a communication to the principal chief of the Choctaw Nation, requesting that he 'inform us the date of your last authenticated roll approved by your national council prior to June 10, 1896, which includes the names of intermarried citizens as well as citizens by blood. It will be necessary for us to have that roll and every other roll made since that time to enable us to comply with the law under which we are to make rolls.'

"In reply to this communication, on August 17, 1897, the principal chief of the Choctaw Nation advised the Commission as follows:

"'I wish to inform you that there was no roll of intermarried citizens made prior to June, 1896.

"'The revised rolls which I recently furnished your Commission is the only roll made by this nation that contains the names of intermarried citizens.'

"The governor of the Chickasaw Nation, on July 22, 1897, in reply to our request of June 28, 1897, advised the Commission as follows:

"'We have only one authenticated roll of citizens, and that is the one approved by the legislature in 1896.'

"And on December 27, 1897, the governor of the Chickasaw Nation advised the Commission that he had that day forwarded a

"true copy of the roll of our people; the best we can do under present circumstances. Any information you may wish in regard to same will be gladly given, if within my power to do so."

"The correspondence had with the chief executives of the two tribes above referred to shows clearly that there had never, prior to the approval of the act of Congress of June 10, 1896, been any rolls of the citizens of the Choctaw and Chickasaw nations which had been ratified and confirmed by the legislative bodies of these two nations or had received the approval of the chief executives. It is a matter of general information in said nations that the rolls made prior to that time were merely census rolls made up separately according to counties and districts by individual census takers in such counties and districts, and which were never brought together or consolidated so as to form a complete roll of tribal members.

"The rolls made under the provisions of the act of Congress of June 10, 1896, by the tribal authorities, have never received the confirmation of the legislative bodies of the two nations nor the approval of the chief executives; so that at the inception of the work of the enrollment of the citizens of these two nations the Commission was only furnished with the two rolls above referred to and made under the provisions of the act of Congress of June 10, 1896, and which, the Commission was informed, contained inaccuracies. In 1898, after the approval of the act of Congress of June 28, 1898, authorizing the Commission to make correct rolls for the citizens of these two tribes, an earnest effort was made to secure from the tribal authorities of these two nations all rolls of citizenship and other papers, documents, and acts of admission of any description that might in any manner assist the Commission in the preparation of correct rolls of the citizens of the two tribes and to determine whether any such rolls, documents, or acts were in existence, and if so, where located.

"In the fall of 1898, when the Commission began the work of enrollment in the Choctaw and Chickasaw nations, Commissioners Bixby and McKennon, who were both in the field, conducted an investigation looking to the location and acquirement of tribal rolls and records. As a result of their personal efforts the Commission secured the Choctaw leased district payment roll of 1893 and the Chickasaw pay roll of 1893. In addition to these two payment rolls they also obtained what are known as the Ieshatubby and Maytubby rolls of 1893, these rolls being memoranda made by Commissioners Ieshatubby and Maytubby in 1893 of those Chickasaw Indians who were residing in the Choctaw Nation. All of the rolls so obtained by Commissioners Bixby and McKennon were procured from individuals who had said rolls in their possession, and the information which the Commissioners obtained at that time lead to the conclusion that it had been the practice of tribal officials charged with any duty in connection with tribal rolls to withdraw them from the executive offices when necessary and to retain them among their personal effects.

"The rolls above referred to were the only rolls of which the Commission could gain any knowledge. Having been repeatedly informed by representatives of both tribes that no tribal rolls of any description were in the executive offices, and being thoroughly satisfied that the tribal officials were sincerely endeavoring to aid the Commission in locating the missing rolls, there appeared to be no foundation upon which to obtain an order of the court.

"After the receipt of departmental communication of October 23, 1902, the Commission at once addressed communications to the governor of the Chickasaw Nation and the principal chief of the Choctaw Nation, with which, for their information, were inclosed copies of the report of the Acting Commissioner of Indian Affairs of October 21, 1902. In these communications the Commission earnestly requested the chief executives of the two tribes that there be transmitted at the earliest practicable date all the rolls of the citizens of the two tribes in the possession of the tribal authorities made prior to the leased district payment roll of 1893, and such other data as would be of benefit to the Commission in determining the rights of persons to be enrolled as citizens of these two nations.

"No reply has ever been received by the Commission to the letter addressed to the governor of the Chickasaw Nation, but under date of November 8, 1902, the principal chief of the Choctaw Nation, in reply to our request, stated as follows:

"In reply I have to say that I have this day written Hon. E. H. Wilson, national secretary of the Choctaw Nation, directing him to be at Tuskahomia on Monday, the 17th instant, for the purpose of making a thorough search among

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the records of the national secretary's office to ascertain if such census or records of citizens of the Choctaw Nation, as suggested in the letter of the honorable Secretary of the Interior, can be found.

"It will require much time to go through the accumulated mass of ill-arranged papers in that office, and would suggest that you send a representative there to cooperate with the national secretary in the search.

"I am certainly interested in securing all the data bearing on the citizenship cases that can be obtained and will lend every assistance in that direction."

"In accordance with the suggestion of the principal chief of the Choctaw Nation, the Commission directed one of its representatives to proceed to Tuska-homa on the 17th of November for the purpose, in conjunction with the national secretary of the Choctaw Nation, of making a thorough search of the records of the national secretary's office for data bearing upon the rolls of citizenship of the Choctaw Nation.

"Another representative of the Commission was directed to proceed to Tishomingo, the national capital of the Chickasaw Nation, for the purpose of securing such records as he might find in the national secretary's office of that nation bearing upon the rights of persons to citizenship in the Chickasaw Nation.

"The result of this investigation in the Chickasaw Nation has been the securing of portions of the 1878 annuity roll of said nation, together with several lists, undated, which apparently contain the names of both citizens and non-citizens. So much of the 1878 annuity roll as was obtained is now being arranged and indexed.

"The representative of the Commission delegated to Tuska-homma secured a large number of incomplete lists of persons, undated and without any caption, and it is impossible, from the condition in which the records were found, to definitely state whether such lists were the rolls of the citizens of the Choctaw Nation.

"Both of the representatives of the Commission delegated for this purpose spent several days in the office of the national secretaries of the two tribes and used every available means of securing any documents that might in any way materially assist the Commission in the determination of the rights of the persons to be enrolled as citizens of the two tribes.

"After these investigations and the return of our representatives to the general office, the Commission was in receipt of a letter, under date of December 15, 1902, from Edward H. Wilson, the national secretary of the Choctaw Nation, as follows:

"Very much to my surprise, as well as pleasure, I found a complete set of the Choctaw census rolls, compiled in 1885. These rolls were found in a most inaccessible place, and were discovered by accident. I forwarded same by to-day's express, and hope you will acknowledge receipt in due time."

"The rolls referred to in the above communication were received by the Commission and are found to be in excellent condition, being separate bound rolls of each county in the Choctaw Nation, certified by the duly and lawfully appointed census enumerator to be a true census of the county, and bearing the certificate of the national secretary of the Choctaw Nation, showing the date the same were filed for record in his office.

"These rolls, containing the names of probably between 12,000 and 14,000 citizens of the Choctaw Nation, are now being indexed by the Commission and this work will presumably be completed within a very short time.

"The Commission believes, as a result of this thorough investigation in this matter, that the only rolls secured which can in any manner be referred to or relied upon as even incomplete rolls of the citizens of these two nations are the 1885 census roll of the Choctaw Nation and the 1878 annuity roll of the citizens of the Chickasaw Nation.

"It is impracticable at this time to determine and advise whether or not the name of Butler McGee, the alleged father of the applicant, Bettie Lewis, in the case under consideration, is found upon the 1885 census roll of the Choctaw Nation, but as soon as the index now being prepared is completed the Commission will report on the inquiry made in departmental letter of August 12, 1902.

"In referring to those cases wherein the Department has affirmed the decision of the Commission refusing the application of persons therein for enrollment as citizens of the Choctaw and Chickasaw nations, the Commission believes that in none of these cases will it be found that the applicants, or their parents, ever obtained any tribal recognition as citizens of these two tribes, and that the greater number of applications were made by the persons in the belief

that the possession of Indian blood was the only requisite to their recognition and enrollment as citizens of these two nations. In those cases already affirmed by the Department, however, the Commission will make an investigation of such rolls and papers as have recently come into its possession and will make report to the Department in all cases in which it is found that the names of the applicants or their ancestors appear thereon.

"The Commission has further to report that in the cases which are now, and in the future will be, forwarded to the Department, the statements as to tribal recognition will include in the Choctaw Nation an examination of the 1885 census roll, the 1893 leased-district payment roll, and the 1896 census roll; and in the Chickasaw Nation the partial 1878 annuity roll, the 1893 leased-district payment roll, and the 1896 census roll, the only rolls which the Commission has been able to secure after a thorough and most painstaking investigation of this matter.

"Respectfully,

"TAMS BIXBY,

"*Acting Chairman.*

"T. B. NEEDLES,

"*Commissioner.*

"C. R. BECKINRIDGE,

"*Commissioner.*"

(Through the Commissioner of Indian Affairs.)

"VII. Whether the records of the Department and the Commissioner to the Five Civilized Tribes show that any person whose name appears on any tribal roll of the Choctaw and Chickasaw tribes, or his or her descendants, have been denied enrollment on the 'final citizenship rolls' of said tribes and denied the right to share in the tribal property, and approximately how many have been so denied."

CHOCTAWS.

The records of the Commissioner to the Five Civilized Tribes show that of the persons whose enrollment as citizens of the Choctaw Nation has been denied, the names of 675 have been found upon the official rolls (see Item III) of said nation or are the minor descendants of the persons so enrolled.

Of this number 130 whose enrollment had been granted by the Commissioner were disapproved by the Department in accordance with an opinion of the Attorney-General of the United States of February 19, 1907, and the names of 203 whose enrollment had already been approved were canceled by the Department under the same opinion.

The applications that were made for the enrollment of 150 of the 675 referred to above as being denied, were dismissed during the months of January, February, and up to March 4, 1907, for the reason that no information as to their whereabouts could be obtained from representative citizens of the tribe or through field parties operating in the nation, and, as no personal applications had been made by such persons, it was believed that they were dead or had removed from the Indian Territory.

CHICKASAWS.

The records of the Commissioner to the Five Civilized Tribes show that of the persons whose enrollment as citizens of the Chickasaw Nation had been denied the names of 87 have been found upon the official rolls of the Chickasaw Nation, or are the minor descendants of persons so enrolled.

Of this number, 19 whose enrollment had been approved were canceled by the Department under an opinion of the Attorney-General of the United States of February 19, 1907, and the applications that were made for the enrollment of 50 persons were dismissed during the months of January, February, and up to March 4, 1907, for the reason that no information as to their whereabouts could be obtained from representative citizens of the tribe or from field parties operating in that nation, and, as no personal applications had been made by such persons, it was believed that they were either dead or had removed from the Indian Territory.

CHOCTAW FREEDMEN.

The records of the Commissioner to the Five Civilized Tribes show that the names of 65 persons, whose enrollment had been denied, appear upon the roll

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of Choctaw freedmen furnished by the Choctaw Nation, or are the minor descendants of persons so enrolled.

It is impossible to ascertain from the records of this office the descendants of persons whose names appear upon the tribal rolls of the Choctaw and Chickasaw nations, other than minor descendants who are enrolled with them upon such rolls.

The names of all applicants for enrollment were checked with the rolls of the Choctaw and Chickasaw nations, which were considered official, as named in Item III, before decisions were rendered, and their names have again been checked with these rolls in the preparation of this data.

The memorandum rolls, hereinbefore referred to, from which the census rolls were made, and all other parts of rolls in the possession of this office contain many names which have been lined out with ink or pencil, names interlined in pencil or with ink of a different kind from that used in the preparation of the rolls, and no information could ever be secured from the tribal officials tending to show by whom or under what authority such corrections and interlineations were made.

No rolls were ever approved by the Choctaw and Chickasaw tribal authorities, as in the case of the 1890 authenticated Creek roll or the 1880 authenticated Cherokee roll, and this office has continuously received protests from the Choctaw and Chickasaw nations against the enrollment of persons whose names were alleged to have been placed on the rolls through fraud or without authority of law.

A special effort is now being made to check the names of applicants with the memorandum rolls, above referred to, but, owing to the difficulties already described, which are attendant upon this work, and the fact that none of these books are indexed, this work will consume considerable time, and, inasmuch as an early report was requested, the information already secured is forwarded. If a further report is required, this office will then be better able to furnish same.

"IX. A copy of the notice issued by the Commission to the Five Civilized Tribes under the act approved June twenty-eighth, eighteen hundred and ninety-eight, directing all persons claiming any rights in the Choctaw and Chickasaw nations to appear before said Commission at certain specified places and times for examination and identification."

The following is a copy of the notice issued in the year 1898:

DAWES COMMISSION.

CENSUS NOTICE.

CHICKASAW NATION.

The Dawes Commission will be at the places, on the dates named below, for the purpose of taking a census of the Chickasaw Indians by blood and Chickasaw freedmen.

Heads of families may enroll the members of their families and minor children who made their homes with them. Guardians may enroll their wards.

Stonewall, September 1, 2, 3, 5, 6, 7, and 8.

Pauls Valley, September 12, 13, 14, 15, and 16.

Ardmore, September 19, 20, 21, 22, and 23.

Tishomingo, September 26, 27, 28, 29, and 30.

Lebanon, October 3, 4, 5, 6, and 7.

Colbert, October 10, 11, 12, 13, and 14.

This work is done preparatory to making final rolls of Chickasaw citizens and freedmen under the provisions of the recent act of Congress, viz:

"* * * Said Commission is authorized and directed to make correct rolls of citizens by blood of all the * * * tribes, eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made. * * * No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship. * * * Said Commission shall make such rolls descriptive of the persons thereon, so that they may be thereby identified, and it is authorized to take a census of each of said tribes, or to adopt any other means by them deemed necessary to enable them to make such rolls. They shall have access to all rolls and records of the several tribes, and the United States court in Indian Territory shall have jurisdiction to compel the

officers of the tribal governments, and custodians of such rolls and records, to deliver same to said Commission, and on their refusal or failure to do so, to punish them as for contempt; as also to require all citizens of said tribes, and persons who should be enrolled, to appear before said Commission for enrollment at such times and places as may be fixed by said Commission, and to enforce obedience of all others concerned, so far as the same may be necessary, to enable said Commission to make rolls as herein required, and to punish anyone who may in any manner or by any means obstruct this work.

* * * * *

"It shall make a correct roll of Chickasaw freedmen entitled to any rights or benefits under the treaty made in eighteen hundred and sixty-six between the United States and the Choctaw and Chickasaw tribes, and their descendants born to them since the date of said treaty.

"No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship.

* * * * *

"The rolls so made, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon, with their descendants thereafter born to them, with such persons as may intermarry according to tribal laws * * * shall alone constitute the several tribes which they represent.

"The members of said Commission shall, in performing all the duties required of them by law, have authority to administer oaths, examine witnesses, and send for persons and papers; and any person who shall willfully and knowingly make any false affidavit or oath to any material fact or matter before any member of said Commission, or before any other officer authorized to administer oaths, to any affidavit or other paper, to be filed, or oath taken, before said Commission, shall be deemed guilty of perjury, and on conviction thereof shall be punished as for such offense."

Persons claiming rights as Chickasaw freedmen will be examined orally, under oath, by members of the Commission, and if additional evidence be deemed necessary in any case witnesses will in like manner be examined, and the rights of claimants thereupon determined by the Commission.

Persons claiming right to enrollment as citizens by blood may also be examined under oath as aforesaid.

Persons desiring enrollment should be promptly on hand.

TAMS BIXBY,
Acting Chairman.
A. S. MCKENNON,
T. B. NEEDLES,
Commissioners.

At the conclusion of the appointments provided for in the foregoing notice, upon the request of interested persons, appointments were held in the Chickasaw Nation at Duncan, October 17, 18, and 19, 1898, and at Chickasha, October 20, 21, and 22, 1898, in order that the citizens living in the vicinity of those two towns might be afforded opportunity to appear without incurring extra expense.

The following is a copy of a notice issued in the year 1899:

CENSUS NOTICE.

CHOCTAW NATION.

The Commission to the Five Civilized Tribes will be at the places on the dates named below for the purpose of taking a census of the Choctaw Indians by blood and Choctaw freedmen.

Heads of families may enroll the members of their families and minor children who make their homes with them. Guardians may enroll their wards.

Atkchi.—From Tuesday, April 18, to Thursday, May 4, 1899, inclusive.

Goodland.—From Monday, May 8, to Friday, May 12, 1899, inclusive.

Anilars.—From Monday, May 15, to Friday, May 19, 1899, inclusive.

Tushahoma.—From Monday, May 22, to Friday, May 26, 1899, inclusive.

Talihina.—From Monday, May 29, to Friday, June 2, 1899, inclusive.

Wister.—From Monday, June 5, to Friday, June 9, 1899, inclusive.

Oak Lodge.—From Monday, June 12, to Friday, June 16, 1899, inclusive.

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Red Oak.—From Monday, June 19, to Friday, June 30, 1899, inclusive.

Hartshorne.—From Monday, July 3, to Friday, July 7, 1899, inclusive.

Calvin.—From Monday, July 10, to Friday, July 14, 1899, inclusive.

Durant.—From Monday, July 17, to Friday, July 21, 1899, inclusive.

Caddo.—From Monday, July 24, to Friday, July 28, 1899, inclusive.

Atoka.—From Monday, July 31, to Friday, August 11, 1899, inclusive.

South McAlester.—From Monday, August 14, to Friday, August 25, 1899, inclusive.

South Canadian.—From Monday, August 28, to Thursday, August 31, 1899, inclusive.

This work is done preparatory to making final rolls of Choctaw citizens and freedmen under the provisions of the act of Congress approved June 28, 1898, viz:

" * * * Said Commission is authorized and directed to make correct rolls of citizens by blood of all the * * * tribes, eliminating from the tribal rolls such names as may have been placed thereon by fraud or without the authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made, with such intermarried white persons as may be entitled to Choctaw * * * citizenship under the treaties and the laws of said tribes. * * * Said Commission shall make such rolls descriptive of the persons thereon, so that they may thereby be identified, and it is authorized to take a census of each of said tribes, or to adopt any other means by them deemed necessary to enable them to make such rolls. They shall have access to all rolls and records of the several tribes, and the United States court in Indian Territory shall have jurisdiction to compel the officers of the tribal governments, and custodians of such rolls and records, to deliver the same to said Commission, and on their refusal or failure to do so, to punish them as for contempt; as also to require all citizens of said tribes, and persons who should be enrolled, to appear before said Commission, and to enforce obedience of all others concerned, so far as the same may be necessary, to enable said Commission to make rolls as herein required, and to punish any one who may in any manner or by any means obstruct said work.

" It shall make a correct roll of all Choctaw freedmen entitled to citizenship under the treaties and laws of the Choctaw Nation, and all of their descendants born to them since the date of the treaty.

" No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship.

" The rolls so made, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon with their descendants thereafter born to them, with such persons as may intermarry according to tribal laws, shall alone constitute the several tribes which they represent.

" The members of said Commission shall, in performing all the duties required of them by law, have authority to administer oaths, examine witnesses, and send for persons and papers; and any person who shall willfully and knowingly make any false affidavit or oath to any material fact or matter before any member of said Commission, or before any other officer authorized to administer oaths, to any affidavits or papers, to be filed, or oath taken, before said Commission, shall be deemed guilty of perjury, and on conviction thereof shall be punished as for such offense."

Persons claiming rights as Choctaw freedmen will be examined orally, under oath, by members of the Commission, and if additional evidence be deemed necessary in any case, witnesses will in like manner be examined, and the rights of claimants thereupon determined by the Commission.

Persons claiming right to enrollment as citizens by blood may also be examined under oath as aforesaid.

Persons desiring enrollment should be promptly on hand.

TAMS BIXBY,
A. S. McKENNON,
T. B. NEEDLES,
Commissioners.

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The following is a copy of a second notice issued in the year-1899:

FINAL NOTICE TO CHOCTAW AND CHICKASAW CITIZENS.

The Commission to the Five Civilized Tribes again gives notice of its appointments for the enrollment of Choctaw and Chickasaw citizens. Those who have not been enrolled must be represented by heads of families at one of the places named below, without fail.

The attention of Chickasaw citizens is especially called to the necessity of presenting themselves for enrollment at one of these appointments, as the Commission will not do further census work in the Chickasaw Nation.

Hartshorne, Tuesday, August 1, to Saturday, August 5, inclusive.

Calvin, Monday, August 7, to Friday, August 11, inclusive.

Durant, Monday, August 14, to Friday, August 18, inclusive.

Caddo, Monday, August 21, to Friday, August 25, inclusive.

Atoka, Monday, August 28, to Saturday, September 2, inclusive.

South McAlester, Monday, September 4, to Wednesday, September 13, inclusive.

South Canadian, Thursday, September 14, to Saturday, September 16, inclusive.

TAMS BIXBY,

A. S. MCKENNON,

T. B. NEEDLES,

Commissioners.

The following is a copy of a notice issued in the year 1900 relative to the enrollment of Choctaws and Chickasaws:

DEPARTMENT OF THE INTERIOR, COMMISSION TO THE FIVE CIVILIZED TRIBES.

ENROLLMENT NOTICE.

The Commission to the Five Civilized Tribes will hear applicants for enrollment as citizens of the Choctaw and Chickasaw nations at

Atoka, Choctaw Nation, from Monday, June 4, to Friday, June 8, inclusive.

Colbert, Chickasaw Nation, from Monday, June 11, to Saturday, June 16, inclusive.

Any and all citizens who have not already made application for enrollment should appear at one of the points named above, without fail, as only those whose names appear on the final rolls can share in allotment.

TAMS BIXBY,

Acting Chairman.

The following is a copy of the notice issued in the year 1902:

DEPARTMENT OF THE INTERIOR, COMMISSION TO THE FIVE CIVILIZED TRIBES.

At a special election held in the Choctaw and Chickasaw nations, September 26, 1902, there was ratified by the citizens of these two tribes an act of Congress approved July 1, 1902, and entitled "An act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes."

This agreement, as so ratified and now effective, provides that the rolls of the citizens of the Choctaw and Chickasaw nations and Choctaw and Chickasaw freedmen shall be made as of the date of the final ratification of such agreement.

Section 34 of said agreement provides as follows:

"During the ninety days first following the date of the final ratification of this agreement the Commission to the Five Civilized Tribes may receive applications for enrollment only of those persons whose names are on the tribal rolls, but who have not heretofore been enrolled by said Commission, commonly known as 'delinquents,' and such intermarried white people as may have married recognized citizens of the Choctaw and Chickasaw nations in accordance with the tribal laws, customs, and usages on or before the date of the passage of this act by Congress, and such infant children as may have been born to recognized and enrolled citizens on or before the date of the final ratification of this agreement, but the application of no person whomsoever for enrollment shall be received after the expiration of the said ninety days."

60 CITIZENSHIP IN THE CHOCTAW AND CHICKASAW NATIONS.

For the purpose of enrollment of those classes of persons as provided by section 34, above quoted, the Commission to the Five Civilized Tribes will be in session at the following designated places and on the dates given:

Chickasha, Chickasaw Nation, October 15 to 17, inclusive.

Pauls Valley, Chickasaw Nation, October 20 to 24, inclusive.

Ardmore, Chickasaw Nation, October 27 to 31, inclusive.

Tishomingo, Chickasaw Nation, November 3 to 7, inclusive.

Ada, Chickasaw Nation, November 10 to 14, inclusive.

Atoka, Choctaw Nation, November 17 to 21, inclusive.

Kullituklo, Choctaw Nation, November 24 to 28, inclusive.

Antlers, Choctaw Nation, December 1 to 5, inclusive.

Tushkahoma, Choctaw Nation, December 8 to 12, inclusive.

Wister, Choctaw Nation, December 15 to 19, inclusive.

South McAlester, Choctaw Nation, December 22 to 24, inclusive.

After December 24, 1902, the Commission will be without authority to receive the application of any person whomsoever for enrollment as a citizen or freedman of either the Choctaw or Chickasaw Nation.

The appointments above designated will be the last opportunity afforded citizens of the Choctaw and Chickasaw nations to present their applications.

It is necessary that the status of all intermarried citizens on September 25, 1902, be determined, and citizens by intermarriage should avail themselves of this opportunity to present testimony showing their status on that date.

The Commission will also, at these appointments, receive applications for the enrollment of infant children born prior to September 25, 1902, and proofs of death of citizens and freedmen, previously listed for enrollment, but who died prior to said date.

No original applications for the enrollment of persons whose names are not on the tribal rolls or applications for identification as Mississippi Choctaws will be heard at these appointments.

COMMISSION TO THE FIVE CIVILIZED TRIBES,
TAMS BIXBY, *Acting Chairman.*

MUSKOGEE, IND. T., *October 4, 1902.*

"X. Whether the records in the custody and possession of the Department and the Commission to the Five Civilized Tribes show that all persons appearing before the Commission under the provisions of the act approved June twenty-eight were examined by said Commission as to their Indian blood and descent under oath and their exact statements reduced to writing and made of record."

It is a matter of general knowledge that all applicants appearing before the Commission to the Five Civilized Tribes at its appointments in the field during the years 1898 and 1899 were examined under oath, and the records of this office show that their testimony was reduced to writing either in the form of stenographic notes or recorded on census cards made in conformity with their statements.

During the appointments held in the years 1898 and 1899, in all cases where the right of the applicant to enrollment was contested by the Choctaw and Chickasaw nations, or where testimony as to the right to enrollment was deemed necessary, the same was reported by stenographers, and the testimony made a part of the record in the respective cases.

All applicants for enrollment as Choctaws and Chickasaws and Choctaw and Chickasaw freedmen who have appeared before the Commission or the Commissioner to the Five Civilized Tribes since the appointments in the field in the year 1899 have been sworn and their testimony, taken under oath, reported by stenographers, and made a part of this record in each case.

"XI. Whether the records in the possession and custody of the Department and the Commission to the Five Civilized Tribes show that persons of mixed Choctaw or Chickasaw Indian and negro blood appearing before the Commission under the provisions of the act approved June twenty-eight, eighteen hundred and ninety-eight, were examined by said Commission under oath solely as to their negro blood and descent and their testimony reduced to writing and made of record."

The records in the possession and custody of the Commissioner to the Five Civilized Tribes do not show that persons of mixed Choctaw or Chickasaw Indian and negro blood appearing before the Commission under the provisions

of the act of Congress of June 23, 1898, were examined solely with respect to their negro blood and descent, but their testimony was reduced to writing in the manner stated under item numbered X.

The records of this office show that, in some instances, persons who were descendants of slaves of Choctaw or Chickasaw Indians and who claimed right to enrollment as citizens by blood had applications pending for enrollment both as citizens by blood and as freedmen.

"XII. Whether the records in the possession of the Department and the Commission to the Five Civilized Tribes show that any other class of persons excepting only persons of mixed Choctaw or Chickasaw Indian and negro blood, appearing before said Commission under the provisions of the act of June twenty-eighth, eighteen hundred and ninety-eight, were examined under oath and their statements reduced to writing and made of record."

The records of this office show that in all cases of intermarried persons and persons whose right to enrollment was contested by the nations, the testimony of the applicant himself, as well as that of any witnesses who could be secured, was taken in shorthand and transcribed and made a part of the record in the respective cases.

The records of this office further show that, as to many of the freedmen whose rights were not contested by the nations, no testimony was taken, but only a memorandum, such as was made in the cases of citizens by blood whose rights to enrollment were not contested, the only difference being that in the cases of freedmen the memoranda were made by stenographers and afterwards transcribed, while in the cases of citizens by blood the memoranda were made in longhand by the examiner himself or by a clerk. In both cases the memoranda were made a part of the record.

As heretofore stated, with reference to the item numbered X, since the beginning of the year 1900 all applicants of whatever class appearing before the Commission to the Five Civilized Tribes have been examined at length and their testimony reduced to writing and made a part of the record in the respective cases.

"XIII. Whether the records in the possession of the Department and the Commission show that persons of mixed Choctaw or Chickasaw Indian and negro blood have been enrolled as 'freedmen' and denied enrollment as Indians, regardless of the quantum of their Indian blood."

The records of this office do not show that persons of mixed Choctaw or Chickasaw Indian and negro blood have been enrolled as freedmen and denied enrollment as Indians regardless of the quantum of Indian blood. According to the well-known custom of Indian tribes, the Choctaw and Chickasaw Indians trace their descent through the mother, and persons of mixed Indian and negro blood who derived their Indian blood through the mother have, regardless of the quantum of Indian and negro blood, been enrolled as citizens by blood.

In cases where the Choctaw or Chickasaw blood was derived through the father and evidence of the marriage to the negro mother shown, the children have been enrolled as citizens by blood.

"XIV. Whether the quantum of Choctaw or Chickasaw Indian blood was held by the Department to be material in the determination of the rights of persons of mixed Choctaw or Chickasaw Indian and white blood."

The records of this Office do not show that the quantum of Choctaw or Chickasaw Indian blood was held by the Department to be material in the determination of the rights of mixed Choctaw or Chickasaw Indian and white blood, but the question considered in the determination of the right of such persons to enrollment was that of residence and the tribal recognition and tribal enrollment of such persons or their parents.

"XV. The number of acres and the appraised value thereof of unselected and unallotted lands in the Choctaw and Chickasaw nations, respectively."

The unallotted area in the Choctaw Nation amounts to, approximately, 2,164,000 acres, which includes the area of, approximately, 1,373,000 acres affected by the proposed forest reserve, leaving subject to allotment, approximately, 791,000 acres, the appraised value of which is, approximately, \$1,914,000.

The unallotted area in the Chickasaw Nation amounts to, approximately, 818,000 acres, the appraised value of which is, approximately, \$3,720,000.

"XVI. Whether the order issued by the Hon. Ethan Allen Hitchcock, Secretary of the Interior, directing the Commission to suspend 'all selections and the issuance of patents' to certain timber lands in the Choctaw and Chickasaw nations, has been rescinded in whole or in part."

The instructions of the Secretary of the Interior of December 8, 1906 (I. T. D. 24490-1906), directing this Office to "suspend all selections and the issuance of patents within the area indicated on the inclosed map until further advised," were modified by the instructions of the Secretary of the Interior of January 12, 1907 (I. T. D. 354, 442-1907), directing "that the lands within the limits of the map transmitted herewith marked 'green' which have not been duly allotted or selected by members of the Choctaw and Chickasaw nations, are reserved from allotment until March 4, 1907, unless previously changed or modified, in order that in the meantime Congress may consider the recommendation of the Agricultural Department that a national forest reserve be established within the area thus reserved."

No further action having been taken prior to March 4, 1907, the Commissioner to the Five Civilized Tribes, on March 9, 1907, addressed the following telegram to the Secretary of the Interior:

"Referring to departmental letter of January twelve, nineteen seven, I. T. D. four hundred forty-two and three hundred fifty-four, nineteen seven, reserving from allotment or selection by members of the Choctaw and Chickasaw nations certain land in the Choctaw Nation as a tentative forest reserve until after March fourth, nineteen hundred seven, requests instructions as to whether this land is now subject to allotment by citizens of the Choctaw and Chickasaw nations."

In reply thereto there was received, on the same date, the following telegram from the Secretary of the Interior:

"Answering telegram ninth instant; allow no allotments of land within the reservation referred to by you until further instructed." which telegram was confirmed by departmental letter of March 11, 1907 (I. T. D., 8442-1907).

No further instructions relative thereto have been received.

In accordance with the instructions contained in the letter calling for this report and in Indian Office telegram of the 8th instant, an estimate has been procured of the number of pages required and the cost thereof, to have printed a copy of the tribal rolls in the possession of this office that were used by the Commission and the Commissioner to the Five Civilized Tribes in enrolling citizens and freedmen of the Choctaw and Chickasaw nations.

Under item numbered II has been given a complete description of the rolls and memoranda rolls in the custody and possession of the Commissioner to the Five Civilized Tribes which appear to have been prepared by the officials, representatives, agents, or individual members of the Choctaw and Chickasaw nations from 1880 to 1900, inclusive, while under item numbered III has been given a list of the official rolls used by this office in the preparation of the final rolls of the Choctaw and Chickasaw nations, and the estimate is based upon the data so given. The 1878 Chickasaw annuity roll was not particularly described under item numbered II, as it was prepared prior to the year 1880, but has been taken into consideration in making the estimate in question. This roll is manuscript in form, with pages 8 by 13 inches in size, 30 lines to a page, and the names of Indians appear upon 81 pages thereof.

The several rolls listed under items numbered II and III are not uniform in size, nor as to the information with reference to the individuals and the families listed therein, and, in many particulars, are not systematic in their arrangement. These rolls have also, to a large extent, been poorly written, many corrections noted thereon in ink or pencil, and many names appear to have been entirely stricken from the rolls by the person or persons having possession of said rolls prior to their delivery to this office.

It has been found difficult, in this short time, to make an accurate count of the names contained in all of these rolls, but there has been procured from a local printer an estimate of the number of pages these rolls would make of printed matter if printed in brevier and on pages the size of that used in Government reports, together with an estimate of the cost thereof.

It has been roughly estimated that the rolls, if printed in brevier, will, including the proper headings, cover a total of approximately 2,000 pages, and will cost, approximately, \$4,500. The printer, in furnishing this approximation, based his estimate upon a total of 100 complete copies of said rolls, and expressed it as his opinion that many pages of the rolls could not be reproduced if set in brevier and on pages the size of those used in Government reports.

Attention is particularly called to the fact that, on account of the unsatisfactory condition of these rolls, it will be impossible, in a very large number of

instances, to ascertain the correct spelling of the names and such names would necessarily have to be omitted from any printed copy thereof that might be made.

Respectfully,

J. G. WRIGHT,
Commissioner.

Mr. BALLINGER. The report of the Secretary of the Interior on Senate resolution No. 69, addressed to Hon. Moses E. Clapp, chairman of the Committee on Indian Affairs, United States Senate, and submitted February 1, 1908, shows that between the years 1830 and 1856 there were seven rolls or partial rolls of the Choctaw Indians prepared by Government officers and agents which were official rolls of the tribes and upon which allotments of land were made, land scrip issued, or moneys paid to the members of said tribe thereon.

The same report shows that there were three official rolls of the Chickasaw Indians prepared between the years 1837 and 1840 by Government officers and agents and that none of these Choctaw or Chickasaw rolls were in the custody and possession of the Commission to the Five Civilized Tribes, or were consulted by the officers of said Commission in the preparation of the final citizenship rolls of said tribes.

Notwithstanding, the Assistant Attorney-General for the Department of the Interior in his instructions issued under date of March 17, 1899, and approved by the Secretary of the Interior on the same day, and which appear on pages 1554 and 1555, volume 2, Senate Report No. 5013, Fifty-ninth Congress, second session, directed the Commission as follows:

The Commission was authorized and directed to enroll the persons indicated and to investigate the right of all other persons whose names were found upon any tribal roll and to omit all such as may have been placed thereon by fraud or without authority of law. They were not authorized to add any name not found upon some roll of the tribe except those of descendants of persons rightfully upon some roll.

This report shows that the following rolls and memoranda of rolls, which "appear to have been prepared by the officials, representatives, agents, or individual members of the Choctaw and Chickasaw nations from 1878 to 1900, inclusive, were alone used by the Commission and the Department in the preparation of the final citizenship rolls of the Choctaw and Chickasaw Indians:"

CHOCTAW NATION.

1885 census roll.
1893 leased district payment roll.
1896 census roll.

CHICKASAW NATION.

1878 annuity roll.
1893 leased district payment roll (Nos. 1 and 2).
Maytubby roll (Nos. 1 and 2).
Ieshatubby roll of Chickasaws residing in the Choctaw Nation who drew the leased district money as Chickasaws.
1896 census roll.

In a letter to the Secretary of the Interior which appears, commencing on page 11 of the report of Commissioner J. George Wright in response to Senate resolution No. 69, and which report was submitted by the Commission under date of January 24, 1903, certain correspondence of the Commission with the Department is set out. On

page 13 the Commissioner of Indian Affairs advised the Commission as follows:

This Office has examined and reported on a large number of cases of applicants for enrollment as citizens by blood of the Choctaw and Chickasaw nations and recommended that the applicants be rejected for enrollment on the presumption that statements by the Commission in those cases, of the general character of the statements in the two cases referred to herein, involved an exhaustive examination of the rolls of those two nations, and is now surprised and disappointed to learn that it was misled into believing that the examination had been thorough and complete. In other words, these recommendations and the action of the Department thereon were based on false premises, and many of the conclusions reached may have been consequently erroneous.

This Office, in the light of the circumstances presented, recommends that the Bettle Lewis case, and all other rejected applicants for citizenship in the Choctaw and Chickasaw nations, be held for further consideration until the Commission is in a position to make a more thorough examination with reference to what the Choctaw and Chickasaw rolls actually do show.

On page 14 of the report appears a communication from the principal chief of the Choctaw Nation, in which he advised the Commission:

It is absolutely impracticable for me to furnish a complete roll of the Choctaws, together with all persons admitted after June 10, 1896.

On page 17 of the report, with reference to the rolls used by the Commission in the preparation of the final tribal rolls, the Commission states:

All of the rolls so obtained by Commissioners Bixby and McKennon were procured from individuals who had said rolls in their possession, and the information which the Commissioners obtained at that time leads to the conclusion that it had been the practice of tribal officials charged with any duty in connection with tribal rolls to withdraw them from the executive offices when necessary and to retain them among their personal effects.

In referring further to these tribal rolls and memorandum furnished by the Indian officers to the Commission, and which were used by the Commission in the preparation of the tribal rolls, the Commissioner to the Five Civilized Tribes states:

The memorandum rolls, heretofore referred to, from which the census rolls were made, and all other parts of rolls in the possession of this office contain many names which have been lined out with ink or pencil, names interlined in pencil or with ink of a different kind from that used in the preparation of the rolls, and no information could ever be secured from the tribal officials tending to show by whom or under what authority such corrections and interlineations were made.

On page 36 of the Report of the Commission to the Five Civilized Tribes there appears the following question, which was specification 10 in the resolution, and the answer thereto by the Commissioner:

Whether the records in the custody and possession of the Department and the Commission to the Five Civilized Tribes show that all persons appearing before the Commission under the provisions of the act approved June 28, 1898, were examined by said Commission as to their Indian blood and descent under oath and their exact statements reduced to writing and made of record.

The Commissioner reports:

It is a matter of general knowledge that all applicants appearing before the Commission to the Five Civilized Tribes at its appointments in the field during the years 1898 and 1899 were examined under oath and the records of this office show that their testimony was reduced to writing either in the form of stenographic notes or recorded on census cards made in conformity with their statements.

During the appointments held in the years 1898 and 1899 in all cases where the right of the applicant to enrollment was contested by the Choctaw and Chickasaw nations, or where testimony as to the right to enrollment was deemed necessary, the same was reported by stenographers and the testimony made a part of the record in the respective cases.

It will be observed that the Commissioner states that it is "a matter of general knowledge" that all persons appearing before the Commission were examined under oath except where the right of the applicant to enrollment was not contested by the Choctaw and Chickasaw nations. This answer clearly shows that any person whom the officials of the Choctaw and Chickasaw nations might desire enrolled were enrolled by the Commission regardless of their rights and no testimony was taken in their cases.

But this statement to the effect that any person appearing before the Commission was examined under oath as to his Indian blood and descent is false, or Commissioner Bixby, who had direct charge of this work, gave perjured testimony before the select committee of the Senate, sitting at Muskogee, in November, 1906. On page 498 of Senate Report No. 5013, part 1, Fifty-ninth Congress, second session, Mr. Bixby testified as follows:

Q. What is your name, official position, and residence?

Mr. Bixby. My name is Tams Bixby. I am Commissioner to the Five Civilized Tribes. I live in Muskogee.

Q. Were you in the field when applicants were examined and identified under the act of 1898?

Mr. Bixby. I was in the Chickasaw Nation in the fall of 1898.

Q. Were you in charge of the examination and identification of either the citizens by blood, freedmen, or intermarriage?

Mr. Bixby. I presided in the tent at which the applicants who claimed enrollment by reason of Chickasaw blood or Choctaw blood presented themselves.

On page 500 Mr. Bixby testified as follows:

Q. Was everything that was said by the applicant at the time he or she appeared before you for enrollment entered upon the examination record such as that [exhibiting paper to witness]?

Mr. Bixby. No, sir; not at all.

Q. Such portions of their statements as you deemed proper to place upon it.

Mr. Bixby. We did not take any testimony in our tent at all.

Q. In the tent in which citizens of mixed Indian and negro blood appeared did they enter everything said by the applicant?

Mr. Bixby. I do not know what you mean by that. In the tent where the freedmen applied they did take some testimony. They did have some stenographers. I did not have anything to do with that. In the tent where I enrolled the Indians by blood we simply made cards. We did not take any testimony at all. That is the proceeding we followed all through the Creek Nation. We did not take any testimony.

The above is the sworn testimony of the man who had peculiar knowledge of the exact facts surrounding the examination of applicants, and his admissions, under oath, were admissions of his own dereliction, and it is hardly to be supposed that he would have made them had they not been true. He states positively that no testimony was taken except in the cases of freedmen.

On page 37 of the Report of the Commissioner to the Five Civilized Tribes appears specification 11, contained in the Senate resolution, and the answer of the Commissioner thereto:

Whether the records in the possession and custody of the Department and the Commission to the Five Civilized Tribes show that persons of mixed Choctaw or Chickasaw Indian and negro blood appearing before the Commis-

sion under the provisions of the act approved June 28, 1898, were examined by said Commission, under oath, solely as to their negro blood and descent and their testimony reduced to writing and made of record.

The Commissioner says:

The records in the possession and custody of the Commissioner to the Five Civilized Tribes do not show that persons of mixed Choctaw and Chickasaw Indian and negro blood appearing before the Commission under the provisions of the act of Congress of June 28, 1898, were examined solely with respect to their negro blood and descent, but their testimony was reduced to writing in the manner stated under item numbered X.

The records of this office show that in some instances persons who were descendants of slaves of Choctaw or Chickasaw Indians, and who claimed right to enrollment as citizens by blood, had applications pending for enrollment both as citizens by blood and as freedmen.

Regardless of the quantum of Indian blood that the claimant possessed, if it could be shown that he or she was on either side descended from a person once held in involuntary servitude, the right of every claimant was denied by the Commission and the Department. This was the uniform holding of the Commission to the Five Civilized Tribes and the Commissioner of Indian Affairs regardless of the quantum of Indian blood of the claimant. In some cases applicants of seven-eighths Indian blood were denied enrollment as Indians and enrolled as freedmen or negroes, as the records show. Here is one of the examination records of this class of persons of mixed Choctaw or Chickasaw Indian and negro blood and who was of more than half Indian blood, as it appears from the certified copy of the examination record set out on page 1514, Senate Report No. 5013, part 2, Fifty-ninth Congress, second session:

In the matter of the application of Lydia Jackson for enrollment as Chickasaw freedmen. Lydia Jackson enrolled.

On pages 1514 to 1517 appear other similar records. Can any sane person contend that the so-called examination of Lydia Jackson, as it appears from the record, was an examination in fact, or that any questions were asked her as to her Indian blood and descent? Will any sane person contend that this was in fact an examination?

On page 38 of the Report of the Commissioner to the Five Civilized Tribes appears the following question, which was specification 12 of the resolution, and the answer of the Commission thereon:

XII. Whether the records in the possession of the Department and the Commission to the Five Civilized Tribes show that any other class of persons excepting only persons of mixed Choctaw or Chickasaw Indian and negro blood appearing before said Commission under the provisions of the act of June 28, 1898, were examined under oath and their statements reduced to writing and made of record.

The Commissioner reports:

The records of this office show that in all cases of intermarried persons and persons whose right to enrollment was contested by the nations the testimony of the applicant himself, as well as that of any witnesses who could be secured, was taken in shorthand and transcribed and made a part of the record in the respective cases.

The records of this office further show that as to many of the freedmen whose rights were not contested by the nations no testimony was taken, but only a memorandum, such as was made in the cases of citizens by blood, whose rights to enrollment were not contested, the only difference being that in the cases of freedmen the memoranda were made by stenographers and afterwards tran-

scribed, while in the cases of citizens by blood the memoranda were made in longhand by the examiner himself or by a clerk. In both cases the memoranda were made a part of the record.

It will be observed from this statement that the Commission does not claim to have examined under oath any person whose enrollment was not contested by the tribal authorities. But the Commissioner is again mistaken in his statement that the testimony of the claimants and their witnesses was taken down in shorthand and reduced to writing. No testimony, as Commissioner Bixby testified and as hereinbefore set out, was taken and reduced to writing except in the cases of freedmen.

It will be further observed from this statement that the favoritism of Indian officials extended likewise to freedmen, and that any case where the Indian officers desired the enrollment of the freedman applicant no testimony was taken.

On page 39 of the Report of the Commissioner appears the following question and answer:

XIII. Whether the records in the possession of the Department and the Commission show that persons of mixed Choctaw or Chickasaw Indian and negro blood have been enrolled as "freedmen" and denied enrollment as Indians, regardless of the quantum of their Indian blood.

The Commissioner reports:

The records of this office do not show that persons of mixed Choctaw or Chickasaw Indian and negro blood have been enrolled as freedmen and denied enrollment as Indians regardless of the quantum of their Indian blood. According to the well-known custom of Indian tribes, the Choctaw and Chickasaw Indians trace their descent through the mother, and persons of mixed Indian and negro blood who derived their Indian blood through the mother have, regardless of the quantum of Indian and negro blood, been enrolled as citizens by blood.

In cases where the Choctaw and Chickasaw blood was derived through the father and evidence of the marriage to the negro mother shown the children have been enrolled as citizens by blood.

As against this statement I desire to put the sworn statement of Commissioner A. S. McKennon, who in testifying with reference to the enrollment of persons of mixed Choctaw or Chickasaw Indian and negro blood, on page 946 of the report of the select committee, Senate Report No. 5013, part 1, Fifty-ninth Congress, second session, said:

I simply addressed myself to the task of determining whether they or their ancestors were slaves of the Chickasaws. If so, I enrolled them; if not, they were not entitled.

The records in the cases of this class of persons show that the one fact the Commission sought to elicit from the applicant was that he or she was a descendant of a person once held in involuntary servitude. And in all cases where it appeared that the person appearing before the Commission and claiming rights was of servile descent on either side he or she was enrolled as a freedman. This holding on the part of the Commission was one of the questions involved in the test case of Joe and Dillard Perry, appearing on page 167 of the laws affecting the Five Civilized Tribes decided by the Assistant Attorney-General for the Department of the Interior on February 21, 1905; and in the decision in that case the Commissioner to the Five Civilized Tribes and the Commissioner of Indian Affairs denied the right of Joe and Dillard Perry to enrollment on the ground that they were of servile

descent and attempted to sustain their contention by citing a decision in the case of Molsie Butler, whose grandmother was held in slavery.

Here we find the brazen statement made by the Commissioner that in the distribution of this tribal property the Commission followed the Indian customs and laws exclusively and disregarded the terms and provisions of the treaty and the grant, by which treaty and grant the Government conveyed the property in controversy to the Choctaw Nation in trust for the exclusive use and benefit of all those persons who comprised the Choctaw community as it existed in 1830, and their descendants. No Indian law or custom could subtract from or add to a right secured by the treaty and the grant. But the Choctaw and Chickasaw constitutions expressly provided that no law should be enacted by the legislatures of the respective nations that was in conflict with the Constitution, treaties, and laws of the United States, so that there can be no warrant in law for the holding of the Commission.

The records in these cases, hereinbefore referred to, show that persons of seven-eighths Indian blood were enrolled as freedmen.

In answer to specification 15 the report shows that the Secretary of the Interior has withdrawn 1,373,000 acres of the allottable lands of the Choctaws from allotment without any pretense of authority of law therefor.

It is this utter disregard of law that has permeated every act of the administrative officers in their management of these trust estates that has resulted in the thousands of protests now being received from persons who have been illegally and fraudulently denied their property rights.

STATEMENT OF MR. GEORGE A. WARD, CHIEF OF DIVISION OF INDIAN TERRITORY, OFFICE OF INDIAN AFFAIRS.

Mr. WARD. Mr. Chairman and gentlemen of the committee, if I understand the object of the bill correctly it is, first, to allow persons who have been enrolled as freedmen and may be in part of Indian blood to bring suit in the proper United States courts to determine their rights, if any they have, as Indians under the treaty of 1830; second, to allow those who were rejected by the citizenship court to do the same thing, and, third, to let anyone, no matter where he lives, if he claims a right in the Choctaw and Chickasaw tribal estate and made application to the Commission for enrollment, to bring that suit, no matter whether he resides in the Indian Territory or Alaska.

Now, I think that it is proper for me to say at the outset, on behalf of the Department, that as to the charges that have been made here, that the Interior Department and the Indian Office were parties to a fraud in law and in fact in connection with the enrollment in the Five Civilized Tribes, there has not been a scintilla of evidence shown to you to substantiate that statement. The case of Laura E. Aiken has been cited. I say to you frankly I do not remember what was held in that case, nor the points involved. It was a physical impossibility to remember all these cases. But if this committee wants copies of the correspondence, I will have them prepared and furnish them to the committee. In the defense of the man who died and did probably write the decision referred to, I may say that he

could have been perfectly sane when he wrote that decision and could have become insane two weeks later. I will say that he may have written the decision two weeks before he took sick.

Mr. McGUIRE. Could we have a copy of that decision?

Mr. WARD. Yes, sir. I will furnish you with a copy of our letter in that case and with a copy of the decision. That is the case of Laura E. Aiken, a Cherokee.

Mr. BALLINGER. That is a Cherokee case, and it was decided under different laws.

Mr. WARD. It is the contention of the Department that the foundation on which the title to the Choctaw and Chickasaw lands is based is the treaty of 1820, and that the cession by this treaty was complete and conveyed the land. Now I will read article 2 of that treaty, just the conveyance clause, from 2 Kappler, page 192 [reads]:

For and in consideration of the foregoing cession on the part of the Choctaw Nation, and in part satisfaction for the same, the Commissioners of the United States, in behalf of said States, do hereby cede to said nation a tract of country west of the Mississippi River, situate between the Arkansas and Red River, and bounded as follows.

Then it goes on to describe the land. It may be contended that these commissioners had not power to bind the United States, but when that treaty was proclaimed, as it was on January 8, 1821, the United States was estopped from in any manner challenging its validity. Its provisions became law, and were equally binding on the United States and on the Choctaws. The Interior Department says this was an absolute grant, and that as the title to the lands was in the United States, this cession conveyed to the Choctaws all title which the United States had. We ceded them then clear from the Arkansas River to Mexico. In 1821 we made a treaty with Spain, by which the one hundredth degree west longitude was fixed as the divisional line between the Spanish and the American territory.

In 1825 we made another treaty with the Choctaws. Omitting the preamble, and reading just the first part of the section, the cause relating to the cession, from Kappler, volume 2, page 212, what does the United States do? What does the United States accept from the Choctaw Nation? [reads]:

The Choctaw Nation do hereby cede to the United States all that portion of the land ceded to them by the second article of the treaty of Doak Stand, as aforesaid, lying east of a line beginning on the Arkansas, 100 paces east of Fort Smith, and running thence, due south, to Red River.

The United States accepted the cession from the Choctaws back to the Government. If the Choctaws did not have the title, how could they cede the land back to the Government?

Mr. McGUIRE. What is the date of that treaty, Mr. Ward?

Mr. WARD. It is January 20, 1825; Kappler, second edition, volume 2, pages 211, 212.

Now, let us take article 2 of the treaty of 1830 and see what that says. That treaty will be found in Kappler, volume 2, page 311 [reads]:

ARTICLE II. The United States under a grant specially to be made by the President of the United States shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian Fork, if in the limits of

the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning. The boundary of the same to be agreeably to the treaty made and concluded at Washington City in the year 1825. The grant to be executed so soon as the present treaty shall be ratified.

Now what did the United States convey? What was the title conveyed? What was the special grant? First, the title was absolute under the treaty of 1820. There was no reversion, no provision that if the tribe should become extinct the land should revert to the Government. That did not come in until the treaty of 1830 and the title conveyed by the patent of March 23, 1842, which identifies article 2 of the treaty of 1830, conveyed to the Choctaw Indians a base fee.

Mr. BALLINGER. Mr. Chairman, may I ask one question? What do you [addressing Mr. Ward] think this language meant which occurred in the negotiations of the treaty, when "Chief Leadstone inquired whether the treaty was to be considered as retaining former treaties and their provisions, or as repealing all former treaties, and the present one only to be relied on? The answer was that it was desirable to fully embrace everything; that the present might be considered the only treaty that was to be looked to; that, excepting former annuities, all previous treaties were to be considered as revoked and set aside." That is the correspondence leading up to the treaty of 1830.

Mr. WARD. I will tell you what the Supreme Court of the United States held on it when I reach it.

What is the difference between article 2 of the treaty of 1830 and the same article of the treaty of 1820? It is simply as I said with reference to the cession and the reversionary interest to the Government; that is practically all, and the proper description of the lands except that they added the words "if within the limits of the United States" in order to cover what was done by the treaty of 1821 with Spain; and the Government well knew that the land was not within the limits of the United States.

Now let us take the decision of the Supreme Court of the United States, in 179 United States, which was cited here the other day. It makes a vast amount of difference, Mr. Chairman and gentlemen, whether you read a few picked lines or whether you read what the court actually said. After mentioning and identifying the treaty of 1830, which is in 7 Statutes, 333, the court said [reads]:

It can not be doubted that the purpose of article 2 of the treaty of 1830 was to provide for a special grant to the Choctaws of the lands intended to be ceded to them by article 2 of the treaty of 1820, and no others. It was as if the parties declared that the words in the treaty of 1820, "thence up the Arkansas to the Canadian Fork, and up the same to its source, thence due south to the Red River," should be held to mean the same as the words in the treaty of 1830, "thence to the source of the Canadian Fork, if in the limits of the United States, or to those limits thence due south to Red River." The treaty of 1830 plainly imports the understanding of the parties at that time that whatever might be the wording of the treaty of 1820, the United States had not thereby intended to grant, and the Choctaws had not thereby expected to receive, any lands at or near the source of the Canadian Fork unless that point was within the limits of the United States—that both parties had in view at that time only lands within the limits of the United States.

As the treaty of 1820 provided that the Choctaws should have lands as far west as the source of the Canadian River, it is suggested that the United States could not legally modify that provision by the subsequent ratification in 1821 of the treaty with Spain signed in 1819. But it was entirely competent for the

parties, without any new or valuable consideration intervening, to rectify a mistake in the description of boundaries, and to agree, as in effect they did by the treaty of 1830, that the words "to the Canadian Fork, and up the same to its source," in the treaty of 1820, were to be interpreted as meaning "to the source of the Canadian Fork, if in the limits of the United States, or to those limits," thus relieving the United States from any obligation to make a special grant to the Choctaws of lands which by the treaty with Spain, ratified in 1821, had been recognized as part of Spanish territory. After the treaty of 1830 the line "thence due south to the Red River" was to be taken as running from a point on the dividing line between the United States and Spain, the one hundredth degree of west longitude as established by the treaty of 1819-1821, *thence due south to that river.*

In confirmation of the view we have taken of the treaty of 1830, we may refer to the agreement made January 17, 1837, by which the Choctaws assented to the formation by the Chickasaws of a district "within the limits of *their country*" (11 Stat.). In the description of the boundaries of that district, which adjoins the district of the Choctaws on the west, it appears that one of the lines ran to a point 10 or 12 miles above the mouth of the South Fork of the Canadian River, "thence west along the main Canadian River to its source, *if in the limits of the United States, or to those limits;* and thence, due south to Red River, and down Red River to the beginning." Here was a repetition of the words of the treaty of 1830, and a distinct recognition of the fact that the Choctaw country was not to be regarded as embracing any lands not then, in 1837, within the limits of the United States. It can not be contended that any lands west of the one hundredth degree of west longitude were within such limits as then established.

You see, we first ceded by the treaty of 1820 from the Arkansas to Mexico and then we made a treaty in 1821 with Spain, fixing the one hundredth degree of west longitude as the boundary line between the Spanish and American territory. Consequently all that land west of the one hundredth meridian belonged to Spain. Then when we made the treaty of 1830, we stuck in the words "if within the limits of the United States or to those limits" ceding them the same land, well knowing that west of the one hundredth degree it was not within the United States.

Mr. McGUIRE. Where is the one hundredth meridian there?

Mr. WARD. It runs in just this side of No Man's Land. It included all that Wichita country and Kiowa and Comanche country.

Mr. STEPHENS. It is the east side of the Pan Handle and the west side of Greer County.

Mr. McGUIRE. It must be the west Oklahoma line?

Mr. STEPHENS. It is.

Mr. WARD. It is, and that includes No Man's Land. Originally No Man's Land was not included in Oklahoma.

Mr. STEPHENS. No Man's Land is on the west side of Texas.

Mr. McGUIRE. It is the eastern boundry of No Man's Land—

Mr. STEPHENS. And of the Pan Handle of Texas. That line was run in 1859 by John H. Clark on the part of the United States and by Gen. William Scurry on the part of Texas.

Mr. WARD. The one hundredth meridian runs along the east side of Beaver County.

Mr. McGUIRE. Any of this here [indicating on map] might have been ceded.

Mr. WARD. All these vast lands were ceded in 1820 to those Indians, clear on out to Mexico; then by reason of this treaty of 1821 to Spain, and in 1825 and in 1830 we cut it down here [indicating].

Mr. McGUIRE. The one hundredth meridian?

Mr. WARD. Yes, sir.

Mr. McGUIRE. So far as the title is now, or was recently, to the Indian Territory, which includes the Choctaw and Chickasaw nations, the treaty of 1820 did give them title?

Mr. WARD. It give the Choctaws absolute title. I propose to cite the decision of the Supreme Court of the United States to that effect.

Mr. STEPHENS. What treaty was it that cut them down to the ninety-eighth meridian?

Mr. WARD. These were friendly Indians down here [indicating]. There was a clause in the treaty of 1866, the case which Captain Stanley carried through the courts; and it was the same way all through here [indicating].

Mr. STEPHENS. You dropped back from the one hundredth meridian to the ninety-eighth?

Mr. WARD. Reading from the same report, United States Reports 179, page 521 [reads]:

There can be no doubt as to the meaning and scope of the treaty of 1855. In order simply to avoid future disputes the United States desired the relinquishment by the Choctaw Nation of all claim to any territory west of the one hundredth degree of west longitude, and, in addition, it obtained a lease of the territory between the ninety-eighth and one hundredth degrees of west longitude for the permanent settlement of the Wichita and certain other tribes or bands of Indians, the right being reserved to the Choctaws and Chickasaws to settle on the leased territory as theretofore. The consideration for "the relinquishment and lease" was \$800,000. It is immaterial to inquire as to the value placed by the Indians or by the United States upon the relinquishment and lease, respectively. The Indians accepted for both the aggregate amount named. It is idle therefore to contend that the Indians had any claim upon the United States, after the treaty of 1855, for lands west of the one hundredth degree of west longitude. The treaty closed that dispute forever, if it had not been closed by previous treaties and by the special grant of 1842, made pursuant to article 2 of the treaty of 1830, and which, as we have said, estopped the Indians from claiming any lands not within the limits of the United States. As to the lands the control of which was acquired by the lease embodied in the treaty of 1855, it may be assumed that the United States did not then desire to obtain the fee, but took the land for specifically defined objects, upon the accomplishment of which the Indians could insist as a condition of the lease.

Now, what are they talking about? What is the Supreme Court talking about? The property of the Choctaw and Chickasaw Indians as it exists to-day? No. The property of the leased district and that west of the one hundredth degree of west longitude. "The treaty closed that dispute forever." What dispute? The dispute about the leased district and the dispute about the lands west of the one hundredth degree.

Mr. BALLINGER. What treaty?

Mr. WARD. The treaty of 1855.

The court does not mention the land of the Choctaws and the Chickasaws as they exist to-day. Remember that the land west of the one hundredth degree was the land that went to Spain. Of course we got it back; but remember that after the treaty of 1855 the land between the ninety-eighth degree and the one hundredth degree of west longitude became what is known as the "leased district."

Mr. McGUIRE. That was the land ceded to the Government for friendly Indians?

Mr. WARD. Yes.

Mr. McGUIRE. And that decision there only relates to the land between the ninety-eighth and the one hundredth degree, and between

the one hundredth degree and Mexico. That is the only land alluded to in that decision?

Mr. WARD. Exactly. Nothing is said about the land of the Indians as it exists now.

Mr. McGUIRE. The property of the Choctaws and Chickasaws, now known as the Choctaw and Chickasaw nations, is not brought into question or the fee simple challenged by that decision?

Mr. WARD. No, sir; and irrespective, Mr. Chairman, of whether the title to the nations as they now exist was conveyed by the treaty of 1820 or the treaty of 1830, the treaty of 1855 made no change. It only changed as to the two tracts you have mentioned. In the opinion of the court, "the treaty closed that dispute forever, if it had not been closed by previous treaties and by the special grant of 1842, made pursuant to article 2 of the treaty of 1830, and which, as we have said, estopped the Indians from claiming any lands not within the limits of the United States."

Now, what are they talking about? "Lands not within the limits of the United States" at the time of the treaty of 1825.

Mr. McGUIRE. From the one hundredth degree to Mexico?

Mr. WARD. Yes, sir. Then the opinion continues:

As to the lands the control of which was acquired by the lease embodied in the treaty of 1855, it may be assumed that the United States did not then desire to obtain the fee, but took the lands for specifically defined objects, upon the accomplishment of which the Indians could insist as a condition of the lease.

That is, between the ninety-eighth and the one hundredth degree.

Mr. STEPHENS. What are you reading from?

Mr. WARD. That is 179 United States, beginning on page 494. I read from page 518, I think it is, and page 522.

Now, you see what the Supreme Court did say about the title.

Mr. McGUIRE. Before you commence on that I want to get clear on this proposition, if you have it in your mind at this time: What were the words added in the treaty of 1830 in addition to the treaty of 1820?

Mr. WARD. That the United States would cause a patent in fee simple to issue to the nation, to inure to them and their descendants while they existed as a nation and lived upon it.

Mr. McGUIRE. That is in both treaties?

Mr. WARD. No. That is in the treaty of 1830. The treaty of 1820 was simply a straight cession. There was no provision for patent, and the treaty of 1825, that ceded back to the United States from the Choctaws, was a straight cession. There was no provision for patents. The treaty itself conveyed title.

Mr. McGUIRE. What treaty was it that conferred title within the limits of the United States?

Mr. WARD. The treaty of 1820. I now cite you article 2 of that treaty, which reads as follows:

ART. 2. For and in consideration of the foregoing cession, on the part of the Choctaw Nation, and in part satisfaction for the same, the Commissioners of the United States, in behalf of said States, do hereby cede to said nation a tract of country west of the Mississippi River, situate between the Arkansas and Red rivers and bounded as follows: Beginning on the Arkansas River, where the lower boundary line of the Cherokees strikes the same; thence up the Arkansas to the Canadian Fork, and up the same to its source; thence due south to the Red River; thence down Red River, 3 miles below the mouth of Little River, which empties itself into Red River on the north side; thence a direct line to the beginning.

While the same article of the treaty of 1830 contains the following words:

ART. 2. The United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian Fork, if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning. The boundary of the same to be agreeably to the treaty made and concluded at Washington City in the year 1825. The grant to be executed so soon as the present treaty shall be ratified.

The principal difference is that article 2 of the treaty of 1820 was a straight and complete cession and conveyed the title to the property to the Indians. Article 2 of the treaty of 1830, this treaty being made subsequent to the treaty with Spain, provides for the issuance of a patent and declares that the land shall inure to the nations and their descendants so long as they exist as a nation, but that if they fail to live on the land or become extinct that it shall revert to the Government.

Let us see what the Supreme Court of the United States said about the title to the Choctaw and Chickasaw lands. I will read from 119 United States, page 138, in the case of the Choctaw Nation against The United States. I will just read the part that applies here. The court was talking about the treaty of 1830. The opinion says:

The most noticeable thing, upon a careful consideration of the terms of this treaty, is that no money consideration is promised or paid for a cession of lands, the beneficial ownership of which is assumed to reside in the Choctaw Nation, and computed to amount to over 10,000,000 acres. It was not an exchange of lands east of the Mississippi River for lands west of that river. The latter tract had already been secured to them by its cession under the treaty of 1820.

Now, remember that in 1820 they gave their lands east of the Mississippi River for the lands west. That is when the deal was made; when they ceded their lands east for the lands west.

MR. BALLINGER. You do not mean to represent that the Choctaws ceded all their lands east of the Mississippi?

MR. WARD. I will reach that when I get to it.

It was not an exchange of lands east of the Mississippi River for lands west of that river.

Now listen [reads]:

The latter tract had already been secured to them by its cession under the treaty of 1820.

Let us see what it is. The latter tract is what tract? "For lands west of that river. The latter tract had already been secured to them by the cession under the treaty of 1820." That is what the Supreme Court of the United States says, and says where they got their lands. It does not say it was conveyed under article 2 of the treaty of 1830, but by the treaty of 1820, and that there was no consideration and nothing is promised or paid for a cession of the lands under the treaty of 1830. The white people had begun to encroach upon the Indians in Alabama and Mississippi, and the treaty of 1830 was for the purpose of forcing them to remove west, and likewise the treaty of 1832 with the Chickasaws.

MR. BALLINGER. Under what treaty was the patent issued?

MR. WARD. Under article 2 of the treaty of 1830.

Mr. BALLINGER. Under which we claim?

Mr. WARD. Yes. The patent identifies article 2 of the treaty of 1830, and is dated March 23, 1842.

Now, then, we reach the treaty with the Chickasaws. I will not go into that because it is getting late. It will be found in Kappler, volume 2, page 357. In that treaty the Chickasaws ceded their country down in the South, Louisiana, Mississippi, etc., to the United States, and agreed to find a location elsewhere. It ran along until 1837. They had sent delegates and so forth to the Choctaw Nation, with a view of making arrangements for their settlement in that country, and it ran along until January 13, 1837 (see Kappler, vol. 2, p. 487), when the Choctaws and Chickasaws themselves made a treaty. The United States did not make that treaty, as is often believed. The Choctaws and Chickasaws made that treaty themselves, and the United States consented.

By this treaty the Chickasaws were to form a district within the Choctaw country. That district was to be known as the Chickasaw district. They were not to have a separate government. They were to have equal representation in the national council, with the Choctaws. But they did not get along well, and finally they established their own government, and each government was recognized by the treaty of 1855.

Now that was the last treaty with the Choctaw and Chickasaw nations prior to the civil war. The war broke out in 1861, and the Choctaws and Chickasaws, as a rule, were loyal to the Confederacy. The country, as we all know, was torn asunder, and after the war was all over, let us see what the Government of the United States did to the other of the Five Civilized Tribes before we go to the Choctaws and Chickasaws. Let us see what was done to the Creeks and the Cherokees and the Seminoles, who also, as a rule, were loyal to the Confederacy. The Government said to them, You must take your freedmen in with you, with the right to participate in your lands and funds. You must take them in and give them an equal amount of land with you. The freedmen of the Creek Nation get 160 acres of land each, just the same as the Creek Indian. In the Cherokee Nation it is the same, except that the amount of land is different, and in the Seminole Nation it is the same. The Indians in these nations share in their own lands only equally with their former slaves and their descendants. The Choctaws said, "No." The Choctaws said, "No; we will not take these freedmen in on an equal basis with us. They have no right to share in our property." What did the Government do? It is in article 3 of the treaty of 1866. It is very long, and I would like to have the article go in as part of the record and thus avoid reading it. It is found in Kappler, volume 2, page 919, article 3.

The following is article 3, referred to:

The Choctaws and Chickasaws, in consideration of the sum of \$300,000, hereby cede to the United States the territory west of the ninety-eighth degree west longitude, known as the leased district, provided that the said sum shall be invested and held by the United States, at an interest not less than 5 per cent, in trust for the said nations, until the legislatures of the Choctaw and Chickasaw nations, respectively, shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent, resident in the said nation at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except

in the annuities, moneys, and public domain claimed by, or belonging to, said nations, respectively; and also to give to such persons who were residents as aforesaid, and their descendants, forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land, after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided; and immediately upon the enactment of such laws, rules, and regulations, the said sum of \$300,000 shall be paid to the said Choctaw and Chickasaw nations in the proportion of three-fourths to the former and one-fourth to the latter, less such sum, at the rate of \$100 per capita, as shall be sufficient to pay such persons of African descent before referred to as within ninety days after the passage of such laws, rules, and regulations shall elect to remove and actually remove from the said nations, respectively. And should the said laws, rules, and regulations not be made by the legislatures of the said nations respectively, within two years from the ratification of this treaty, then the said sum of \$300,000 shall cease to be held in trust for the said Choctaw and Chickasaw nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from the said Territory in such manner as the United States shall deem proper, the United States agreeing, within ninety days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove; those remaining or returning after having been removed from said nations to have no benefits of said sum of \$300,000, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations.

Now, by article 2 it was agreed that slavery should be forever abolished among the Choctaws and Chickasaws. Now, what did the Government say by article 3? Finally it was agreed that "When allotment time comes we, the Choctaws and Chickasaw Indians, will give them, the freedmen, 40 acres of land each—all persons of African descent, resident in the said nations at the date of the treaty of Fort Smith, September, 1865," which was never ratified. These, substantially, are the words of the treaty:

To them and their descendants, when the time for allotment comes, we will give them 40 acres of land each; to them and their descendants, resident in the Choctaw and Chickasaw country at the date of the treaty of Fort Smith in September, 1865.

Mr. BALLINGER. Did not the Government of the United States compensate the Choctaw and Chickasaws for the cessions made, and did the grant extend to any minor or any descendant born after the treaty was ratified in 1866?

Mr. WARD. It did not, and when we reach the Curtis Act I would like to have somebody ask me about it if I overlook it. The words of the treaty are, "to them and their descendants resident in the Choctaw and Chickasaw country at the date of the treaty of Fort Smith." That treaty was dated September 18, 1865.

Now, then, there is the first time, Mr. Chairman and gentlemen of this committee, that the freedmen were recognized as entitled to share in the benefits of that property. Here are the Chickasaw laws—the 1860 edition, page 79. The act was approved. This was, of course, before the freedmen were recognized, but it shows how these people felt with respect to the freedmen and their right to share in their lands. The act was approved in 1857. It goes on to provide that they can not hold property in the Choctaw and Chickasaw nations. If you prefer, I will have typewritten copies made and sent to the committee, and not read them.

Mr. McGUIRE. I wish you would.

Mr. WARD. The next act is November 27, 1857.

Mr. STEPHENS. If you would cite all the acts, it would be well.

Mr. WARD. Yes; I will cite them all. They are as follows:

- An act prohibiting negroes from holding property.
- An act prohibiting negroes from voting, etc.
- An act in relation to cohabiting with negroes.
- An act amendatory to an act entitled "An act prohibiting negroes from voting and holding office."
- An act in relation to free negroes.
- An act in relation to free negroes. (Amendment.)
- An act in relation to trading with negroes.

AN ACT Prohibiting negroes from holding property.

Be it enacted by the legislature of the Chickasaw Nation, That from forty days after the passage of this act no negro slave in this nation shall own any horse, mule, cow, hog, sheep, gun, pistol, or knife over four inches long in the blade.

Be it further enacted, That should any negro be caught with any property named in the above act it shall be taken from him or them by the proper officer or officers and sold, by order of the court having jurisdiction, to the highest bidder for cash, one half of which shall go to the officer who collects it and the other half shall be paid into the county treasury for county purposes; and the negro shall receive thirty-nine lashes on the bare back by the sheriff or constable.

Be it further enacted, That should any citizen of this nation claim property supposed to belong to a negro he, she, or they shall be cited to appear before the county judge of the proper county, and shall be compelled to testify on oath to the validity of such property. And should any person be convicted of falsely claiming any of the property named in the preceding sections he, she, or they so offending shall be deemed guilty of perjury, and shall be punished accordingly.

Be it further enacted, That if any negro be caught with any spirituous liquors in this nation he, she, or they shall receive thirty-nine lashes on the bare back for every such offense by the sheriff or constable.

Approved November 19, 1857.

C. HARRIS, Governor.

AN ACT Prohibiting negroes from voting, etc.

Be it enacted by the legislature of the Chickasaw Nation, That no negro or the descendant of a negro shall hold any office in this nation or be allowed a vote.

Approved, November 20, 1857.

C. HARRIS, Governor.

AN ACT In relation to cohabiting with negroes.

Be it enacted by the legislature of the Chickasaw Nation, That from and after the passage of this act all persons other than a negro is hereby prohibited from cohabiting with a negro or negroes, under the following penalties: Any person violating this act shall be compelled to pay a fine of not less than twenty-five nor exceeding fifty dollars and be compelled to separate by the court having jurisdiction; for the second offense the penalties shall be double the above amount.

Be it further enacted, That when said fine is collected one half shall go to the informer and the other to the county treasurer of the county where said case is tried, for county purposes.

Be it further enacted, That any white man living in the nation under a permit or citizen of the United States who shall violate this act shall be subjected to a fine at the discretion of the court having jurisdiction, and forthwith be compelled to leave the nation and forever stay out of the limits of the same.

Be it further enacted, That should the person convicted of the above offense not be able to pay the fine, he or she shall be lodged in the national jail not less than ten days nor more than three months.

Approved, March 16, 1858.

C. HARRIS, Governor.

78 CITIZENSHIP IN THE CHOCTAW AND CHICKASAW NATIONS.

AN ACT Amendatory to an act entitled "An act prohibiting negroes from voting and holding office."

Be it enacted by the legislature of the Chickasaw Nation. That from and after the passage of this act no negro or descendant of a negro shall have any of the rights, privileges, and immunities of citizens of this nation, and shall not be allowed his oath in any of the courts of the nation where any other person but a negro or descendant of a negro is interested.

Be it further enacted, That any law or parts of laws conflicting with this act are hereby repealed.

Approved October 12, 1858.

D. COLBERT, Governor.

AN ACT In relation to free negroes.

Be it enacted by the legislature of the Chickasaw Nation. That from and after the passage of this act it shall be the duty of the county judge of each county of this nation to order out of the limits of their respective counties any free negro or negroes, and if such negroes fail or refuse to go, two months after the order for their departure was given, it shall be the duty of the county judge to order the proper officers of his county to take such negro or negroes in custody, and after giving fifteen days' notice thereof, in at least three public places in his county, proceed to sell such negro or negroes to the highest bidder for cash, the aforesaid negro or negroes, for the term of one year; and it shall be the duty of the sheriff to sell such property yearly until the negro or negroes agree to leave the jurisdiction of the nation. The purchaser of such property is hereby secured in the title of such property for the aforesaid space of time, as much so as if the negro or negroes were or had been slaves for life.

Be it further enacted, That any moneys arising from the sales of any negro or negroes under this act shall be placed in the county treasury of the county where such negro or negroes was sold for county purposes.

Be it further enacted, That at any time after the aforesaid two months it shall be the duty of the sheriff or constable of the county to take such negro or negroes into custody and to dispose of them as provided for in a previous section of this act, and if such negro or negroes move out of the nation at or before the time prescribed in a preceding section of this act and fail to remain out entirely they may be taken up and disposed of as previously provided for.

Approved October 14, 1858.

D. COLBERT, Governor.

AN ACT In relation to free negroes. (Amendment.)

Be it enacted by the legislature of the Chickasaw Nation, That, from and after the passage of this act, it shall be the duty of the county judge of each county of this nation to order out of the limits of their respective counties any free negro or negroes; and if such negroes fail or refuse to go within two months after the order for their departure was given, it shall be the duty of the county judge to order the proper officers of his county to take such negro or negroes in custody, and after giving fifteen days' notice thereof, in at least three public places in his county, proceed to sell such negro or negroes to the highest bidder for cash, the aforesaid negro or negroes, for the term of one year; and it shall be the duty of the sheriff to sell such property yearly until the negro or negroes agree to leave the jurisdiction of the nation; and the purchaser of such property is hereby secured in the title of such property for the aforesaid space of time, as much so as if the negro or negroes had been slaves for life.

Be it further enacted, That any moneys arising from the sales of any negro or negroes under this (act) shall be (put) in the county treasury of the county where such negro or negroes was sold, for county purposes.

Be it further enacted, That, at any time after the aforesaid two months, it shall be the duty of the sheriff of the county to take such negro or negroes into custody and to dispose of them as provided for in a previous section of this act, and, failing to remain out entirely, they may be taken up and disposed of as previously provided for.

Approved, October 14, 1859.

D. COLBERT, Governor.

AN ACT In relation to trading with negroes.

Be it enacted by the legislature of the Chickasaw Nation, That from and after the passage of this act all and every person or persons, are hereby expressly prohibited from trading with any negro or negroes, slaves, without a

permit from their owners or the person having him or them in charge; and if any person or persons trade with any negro slave without a permit, he, she, or they shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be compelled to pay a fine of not less than fifteen nor more than forty dollars, at the discretion of the court having jurisdiction of the same.

Be it further enacted, That if any citizen from the United States shall come within the limits of the Chickasaw Nation and trade with any negro or negroes without a permit from their owner or the person having them in charge, he or they so offending shall be arrested by the sheriff or constable, or any citizen of the nation, and taken to the United States agent for the Chickasaws and Choctaws, to be dealt with according as the law directs.

Be it further enacted, That when the above fine is collected it shall be placed in the national treasury, for public purposes.

Passed the House October 15, 1850.

JOEL KEMP, *Speaker*.

Attest:

C. HARRIS, *Clerk pro tem*.

Passed the Senate October 15, 1850.

J. KEMP, *President*.

Attest:

J. BROWN, *Secretary of the Senate*.

Approved, October 15, 1850.

D. COLBERT, *Governor*.

Let us see what the Choctaw Nation says about this matter.

Mr. STEPHENS. What year was that?

Mr. WARD. The bill was approved October 30, 1888. It is short and I will read it. It is entitled: "Intermarriage between Choctaws and negroes." It provides (reads):

Be it enacted by the general council of the Choctaw Nation assembled, That it shall not be lawful for a Choctaw and a negro to marry; and if a Choctaw man or Choctaw woman should marry a negro man or negro woman he or she shall be deemed guilty of a felony, and shall be proceeded against in the circuit court of the Choctaw Nation having jurisdiction the same as all other felonies are proceeded against; and if proven guilty shall receive fifty lashes on the bare back.

Mr. STEPHENS. That sounds like a Texas law.

Mr. BALLINGER. Mr. Chairman, may I ask one more question? Then I will not interrupt any more. It is admitted, Mr. Ward, that this grant was made under the treaty of 1830, under which the patent issued, is it not?

Mr. WARD. It is not, sir. The land was conveyed by the treaty of 1820. The treaty of 1820 conveyed the land that patent was issued for under the treaty of 1830. The treaty cession of 1820 was perfectly good without a patent. The treaty of 1830 simply conveyed the same lands, "if within the limits of the United States," that were ceded in 1820.

Mr. BALLINGER. Don't you think it would be more appropriate for a constitutional court to determine that question than for the Department you represent to attempt to determine it?

Mr. WARD. The Supreme Court of the United States has determined it in 119 United States, page 38.

Mr. BALLINGER. How long ago?

Mr. WARD. About twenty years ago.

Mr. BALLINGER. What case?

Mr. WARD. The United States against the Choctaw Nation. But I do not want to enter into any acrimonious discussion with you about it. I am talking to the committee, and I did not bother you when you were speaking.

Now, then, going back to the freedmen, it was necessary for the Choctaws and Chickasaws to adopt their freedmen, even before they could be allowed to take 40 acres of land each. The treaty did not even bring them in on the 40-acre basis. They had to be adopted. In 1873 the Chickasaws adopted their freedmen. On January 10, 1873, the Chickasaw Nation passed an act adopting them. It was sent to the President, by him forwarded to Congress, and referred to the Committee on Freedmen's Affairs, not the Committee on Indian Affairs; but no action was taken until August 15, 1894, when Congress passed an act (28 Stat. L., 286) approving the Chickasaw act of 1873, adopting the freedmen.

But in the meantime what had the Chickasaw Nation done? In November, 1885, the Chickasaw legislature passed an act repealing the act of 1873 adopting the Chickasaw freedmen.

COMMITTEE ON INDIAN AFFAIRS,
HOUSE OF REPRESENTATIVES,
March 3, 1908.

The subcommittee on Indian Affairs met at 2.35 o'clock p. m., Hon. Bird S. McGuire (chairman) presiding.

STATEMENT OF GEORGE A. WARD—Continued.

Mr. WARD. Here are the letters I said yesterday I would bring up, and here also is a statement of the exact difference in the wording of the treaties of 1820 and of 1830.

Before going back to the questions involved, in view of the attack that was made on the gentleman designated as "M. M. M." yesterday, who was Major Moore, I feel that I would be derelict in my duty if I did not tell you gentlemen something about that man. He is in his grave and can not answer for himself. I refer to Major Moore, and I want to advise this committee that he was an honorable Union soldier. He enlisted in the war in 1861 when he was but 16 years of age. He was made second lieutenant at the time of his enlistment. Before the war was over he had reached the rank of major. He served through the entire war; he suffered the iniquities of the "bull pen" of Libby Prison for fifteen long months; he was taken from Libby Prison to Charleston, and he and others were used as a breast-work to prevent the bombardment of Charleston by the Union soldiers. He was then taken to Georgia and with others herded in a field like cattle. He escaped and was more than two months in reaching his command, traveling through the snowy mountains in his bare feet. When he escaped he and nine others, for the purpose of throwing the bloodhounds off their tracks, waded through a creek, crossed to the opposite bank, and then traveled along that bank and went back to the water in the depth of winter, and repeated this time and time again for the purpose of getting away from the bloodhounds. Their tracks are filled with blood, and no man ought to come here and villify or assail the name of that honorable man who is dead and can not defend himself.

Mr. BALLINGER. I never assailed the name of Mr. Moore. I objected to the Interior Department following a decision rendered by a

man who was insane at the time he wrote the decision, and which decision pertained to the Cherokee Nation, and not to the nation in which the people claimed their rights to the exclusion of the—

Mr. WARD. That decision is incorrect; I have it here before me. The decision to which the gentleman refers was rendered on the 18th of May, 1906, and in accordance with my agreement of yesterday, I hand the committee a copy, and also a copy of the Department's letter approving it, and a copy of the Department's letter subsequently reconsidering the case on a motion for review, and denying the motion.

Major Moore died July 28, more than two months after the decision, and he was in the hospital, I think—I am not certain about that—I think about two weeks; it may have been a little longer.

Now we will take up the Laura Akin case and dispose of that. Here is an extract from the testimony of Laura E. Akin.

Mr. BALLINGER. Will you permit me—

The CHAIRMAN. I suggest that any questions to be asked shall come up afterwards, and you gentlemen will have an opportunity to speak.

Mr. WARD. She applied to the Commission in 1906. Her testimony was again taken November 23, 1905. This is an extract of her testimony:

Q. You know where the Bill Stephens place is?—A. I know where we lived, and my father owned that place.

Q. Well, it was your father that was an applicant for Cherokee citizenship in 1896, and your application was included in that application?—A. Yes, sir.

Q. And your father's citizenship rights were denied in 1896, weren't they?—A. I do not understand?

Q. Your father's application for citizenship was denied in 1896, was it not?—A. They were rejected; that association that he belonged to.

Here is the decision complained of. I will read just the material part of it:

The record shows that Francis M. Defoe, father of the principal applicant, made application for himself and family, including the principal applicant herein, to the Commission to the Five Civilized Tribes, that the applicant was denied under the provision of the act of June 10, 1896, and no appeal taken therefrom. It is further shown that no application has been made by Laura E. Akin for herself or the minors herein prior to October 31, 1902, and that none of them or any ancestor has been enrolled or admitted to citizenship by any tribal authority of the Cherokee Nation or by any United States tribunal.

Let us see if we did not follow the opinion of the Assistant Attorney-General, even if Major Moore did write the recommendation. I want to correct what I said yesterday. I find that I did initial that letter.

Here is the first opinion that was written on this business. It is by Judge Van Devanter. After discussing all these laws fully, what did he say?

There can be no question as to the effect of this act. It made the Commission's determination as to the names to be enrolled a finality, except where an appeal should be taken to the court, and there the court's decision was declared final. No other tribunal or officer had any authority to revise or change the rolls as prepared by the Commission.

Mr. MORSE. What Commission was that?

Mr. WARD. That was the Commission to the Five Civilized Tribes or the tribal citizenship committee.

The recommendation of the Indian Office in the Laura E. Akin case follows absolutely the opinion of the Attorney-General of March 11,

1899, and our office and the Interior Department stand as firmly by that decision to-day as they did when it was prepared.

Now, do you want me to state our contention?

Mr. MORSE. If you please.

Mr. WARD. Our contention is simply this: That the lands now belonging to the Choctaw-Chickasaw nations were conveyed by the treaty of 1820, and that only persons who were of Indian blood were entitled to full allotments; that the man who is a freedman is only entitled to 40 acres in accordance with the provisions of the treaty.

Now, we will take the act of the Chickasaw council of January 10, 1873:

On January 10, 1873, the Chickasaw legislature likewise passed an act adopting the freedmen of that nation in accordance with the treaty. The act was forwarded to the President, who laid it before the Speaker of the House of Representatives on February 10, 1873. It was referred to the Committee on Freedmen Affairs, but no further action was taken on the subject until August 15, 1894, when the Congress passed an act (28 Stat. L., 286) approving the Chickasaw act of 1873 which adopted the freedmen. Meanwhile, on October 22, 1885, the Chickasaw legislature had repealed that act.

The right of the freedmen to share in Choctaw and Chickasaw lands without compensation to the nations was afterwards passed on by the Court of Claims and the Supreme Court of the United States, which were given jurisdiction of the case by the Choctaw-Chickasaw supplemental agreement. The Supreme Court declared that under the supplemental agreement, "and not independent thereof," the Chickasaw freedmen were entitled to land of the value of 40 acres of the average allottable land, and that the Choctaw and Chickasaw nations were entitled to compensation from the United States for such land in accordance with the agreement. (See 193 U. S., 115.)

Mr. MORSE. One more question. What effect will the passage of this bill have on your contention?

Mr. WARD. It would allow everybody, everyone who has been enrolled as a freedman, if he saw fit to bring suit in the United States circuit or district court for the purpose of determining his rights, if any he has, and it would also let all of the "court claimants" do the same thing, and all persons who have been rejected by the Department, probably including a lot of Mississippi Choctaws who were identified on March 10, 1899, and the law subsequently changed in such way as to exclude them, and the roll on which their names appear was disapproved.

The CHAIRMAN. How many are there of those?

Mr. WARD. I think there were something like 1,923. Of those probably 400 or 500 were identified and given allotments under the subsequent legislation.

Mr. MORSE. That would allow them all to come into court?

Mr. WARD. Yes, sir.

Mr. MORSE. Would it change the law under which the property would be divided?

Mr. WARD. No; I assume that the property would be divided under the supplemental agreement and the act of 1898.

Mr. MORSE. The intention of this bill is simply to give these people one more chance in court?

Mr. WARD. That is the idea—to give them another opportunity.

Mr. MORSE. It does not seek to change the law by which the property would be divided in any manner?

Mr. WARD. I think not.

The CHAIRMAN. Is it your idea that in case this bill passes, as it now provides, those freedmen who have already taken their allotments, their 40 acres, would have an opportunity to or could commence suit under this bill?

Mr. WARD. I think so. It says: "Any person claiming rights in the Choctaw-Chickasaw land." Now, on January 10, 1873, the Chickasaw legislature passed an act adopting the freedmen of that nation in accordance with the provisions of the treaty of 1866. As I told you yesterday, that act was referred or sent up to the President, who referred it to Congress, and it was referred to the freedmen's committee. These freedmen were never adopted by the tribe. The Choctaw freedmen were adopted by the Choctaw tribe. The United States will only pay for the lands allotted to the Chickasaw freedmen. What is given the Choctaw freedmen is a gratuity on the part of the nation; the Government of the United States will have to pay for the lands allotted to the Chickasaw freedmen, because the Supreme Court of the United States (193 U. S., 115), in the case of the Choctaw and Chickasaw nations against the United States, held that the Chickasaw Nation never had been adopted, that they became entitled to rights in the property of the Choctaw-Chickasaw nations under the provisions of the supplemental agreement, the act of July 1, 1902, and in the language of the act, "not independently thereof." Had the allotment gone on, and the agreement of 1902 not been made, but the allotment made under the act of 1898, the Chickasaw freedmen would not have received a foot of land.

Mr. E. P. HILL (representing the Choctaw Nation). There was a question asked if it would change the law. I called Judge Ward's attention to this. It would change the law in this particular, that the law now provides that the freedmen shall receive 40 acres of land, and if this bill goes through they would receive 320 acres of land.

Mr. WARD. They would get a full allotment the same as Indians. It would change the law to that extent.

Now, let us take the act of June 10, 1896, 29 United States Statutes, page 339. That act provides:

That said Commission [meaning the Commission to the Five Civilized Tribes] is further authorized and directed to proceed at once to hear and determine the application of all persons who may apply to them for citizenship in any of said nations, and after such hearing they shall determine the right of such applicant to be so admitted and enrolled: *Provided, however*, That such application shall be made to such Commissioners within three months after the passage of this act. The said Commission shall decide all such applications within ninety days after the same shall be made.

That in determining all such applications said Commission shall respect all laws of the several nations or tribes, not inconsistent with the laws of the United States, and all treaties with either of said nations or tribes, and shall give due force and effect to the rolls, usages, and customs of each of said nations or tribes: *And provided, further*, That the rolls of citizenship of the several tribes as now existing are hereby confirmed, and any person who shall claim to be entitled to be added to said rolls as a citizen of either of said tribes and whose right thereto has either been denied or not acted upon, or any citizen who may within three months from and after the passage of this act desire such citizenship, may apply to the legally constituted court or committee designated by the several tribes for such citizenship, and such court or committee shall determine such application within thirty days from the date thereof.

In the performance of such duties said Commission shall have power and authority to administer oaths, to issue process for and compel the attendance of witnesses, and to send for persons and papers, and all depositions and affidavits

and other evidence in any form whatsoever heretofore taken where the witnesses giving said testimony are dead or now residing beyond the limits of said Territory, and to use every fair and reasonable means within their reach for the purpose of determining the rights of persons claiming such citizenship, or to protect any of said nations from fraud or wrong, and the rolls so prepared by them shall be hereafter held and considered to be the true and correct rolls of persons entitled to the rights of citizenship in said several tribes: *Provided*, That if the tribe, or any person, be aggrieved with the decision of the tribal authorities or the Commission provided for in this act, it or he may appeal from such decision to the United States district court: *Provided, however*, That the appeal shall be taken within sixty days, and the judgment of the court shall be final.

That the said Commission, after the expiration of six months, shall cause a complete roll of citizenship of each of said nations to be made up from their records, and add thereto the names of the citizens whose right may be conferred under this act, and said rolls shall be, and are hereby, made rolls of citizenship of said nations or tribes, subject, however, to the determination of the United States courts, as provided herein.

The Commission is hereby required to file the lists of members as they finally approve them with the Commissioner of Indian Affairs, to remain there for use as the final judgment of the duly constituted authorities.

Take the next act, that of June 10, 1897. About the only thing this act did was to continue the power of the committee and to define the words "rolls of citizenship" as used in the act of June 10, 1896.

We now reach the act of June 28, 1898, generally known as the Curtis Act. Section 21 of that act says that this Commission shall make correct rolls of all Choctaw freedmen entitled to citizenship under the treaties and laws of the Choctaw Nation, and all their descendants born to them since the date of the treaty of 1866. You see that is where the descendants born since September 18, 1865, come in. If you remember, the treaty provides "to them and their descendants at the date of the treaty of Fort Smith." This is the act giving to the persons born of Choctaw freedmen since that time property rights. Had it not been for those few words there they would not have shared. What does it say about the Chickasaw freedmen?

It shall make a correct roll of the Chickasaw freedmen entitled to any rights or benefits made under the treaty of 1866 between the United States and Chickasaw tribes and their descendants born to them since the date of said treaty, and 40 acres of land, including their present residences and improvements, shall be allotted to each, to be selected and held by them until their rights under said treaty shall be determined in such manner as shall hereafter be provided by Congress.

Congress afterwards directed, by the supplemental agreement, that suit be brought to test their rights, and an appeal to the Supreme Court of the United States was authorized. The court decided in favor of the Choctaw freedmen, and held that the Chickasaw freedmen became interested by reason of the provisions of the act of 1902, and the Court of Claims in entering up the decree declared the amount the United States should pay the nation for the land given to the Chickasaw freedmen would be hereafter determined. As I have shown you, this act required us to respect the laws, usages, rolls, and customs of the tribes. The records show that it has been the custom of those two tribes, the universal custom, to enroll the children with the mother; the children of a freedmen mother and an Indian father are enrolled as freedmen. The child of an Indian mother and a freedmen father is enrolled as an Indian. That practice was followed by the Commission and the Department.

In February, 1907, Bishop W. B. Derrick memorialized the President and asked that he send a certain bill to Congress authorizing the transfer of any name from the freedmen to the blood roll of any person who was in part of Indian blood. Our office was asked for its views as to sending the papers to the Attorney-General for opinion. We had no objection, and were glad to have the opinion. Here is what he said. His opinion is dated February 27, 1907. He goes into the subject very fully, and concludes:

To hold that descendants of Indians and negroes who were always recognized by the tribal authorities as freedmen, and never as citizens, are entitled, simply because of their Indian blood, to be placed upon the rolls of citizens, would be entirely inconsistent with the previous action of the Government in this matter and in complete disregard of the rolls, customs, and usages of the tribes. There would be no end to the claims that could be made if everyone who had some Choctaw or Chickasaw blood was to be deemed a "descendant," within the meaning of the treaty of 1830, without regard to tribal recognition and enrollment or to the legitimacy of his "descent."

* * * * *

The Government has been for more than ten years engaged in the work of allotment of Indian lands and enrollment of Indian citizens among the Five Civilized Tribes; it has given every class of claimants to these privileges every reasonable opportunity to assert their claims, and to thus overturn its whole system and policy at the very last moment to let in these claimants would be, in my opinion, both inexpedient and unjust. I advise that you do not recommend legislation referring such claims to the Court of Claims or otherwise recognize them.

Mr. BALLINGER. Does not the Attorney-General in the same opinion state that these same people probably had rights there, but they are guilty of laches?

Mr. WARD. I can not say without having the opinion before me.

Mr. MORSE. Will the passage of this bill change the rights of these parties?

Mr. WARD. It would change the right to this extent: Suppose here is A. B. enrolled as a freedman. He comes into court, and we will say, for the sake of the argument, that the court decides that he is entitled to enrollment as an Indian. Instead of getting 40 acres of land, he will get a full allotment of 320 acres of average land, and he will share in the funds, if the court decides that he should be enrolled as an Indian.

Mr. MORSE. Ought he not to be enrolled as an Indian?

Mr. WARD. Not unless the present legislation of Congress is changed, because Congress said "to follow the laws, usages, and customs of the tribe," and that is exactly what we have done.

Mr. MORSE. Is not the court to be governed by the laws of Congress?

Mr. WARD. I assume it would be.

Mr. MORSE. Then it would simply give the people a chance, as I understand, to be heard in court.

Mr. WARD. They have already had their chances, in 1896 and in 1897 and in 1898, and then again under the supplemental agreement.

The CHAIRMAN. I think Mr. Morse had reference to the fact that this bill gives him a right to be heard regularly in the Federal courts. I think, if I understand, there are only a part of them that have ever been before the Federal courts to have the questions of law of their cases passed on. They have been before the constituted courts for specific purposes. Only part of them have been before the Federal

court. If I am wrong, you will correct me, and my impression is that the tribal court threw out a number of those cases on which the Federal court had passed. Am I right about that?

Mr. WARD. Oh, no; you mean the citizenship court.

The CHAIRMAN. The citizenship court?

Mr. WARD. Oh, yes; on which the courts in the Indian Territory had passed.

The CHAIRMAN. The Federal court?

Mr. WARD. The Federal court of the United States.

The CHAIRMAN. I will say this frankly to you, the stickler in this case to me is that I can not reconcile myself to the idea that this citizenship court should throw out a number of cases where the Federal court, an ultra vires Federal judge, had passed upon the law and the evidence in reference to that case.

Mr. WARD. I will explain that to you. I just want to file some citations in reference to the decisions of courts defining the word "negro:"

A person having one-fourth of African blood is not a white person, but a mulatto or negro. (*Geutry v. McMinnis*, 33 Ky. (3 Dana), 382, 385, 386.)

"Negro," as used in acts 1877-78, chapter 7, section 8, providing that any white person who shall intermarry with a negro, and any negro who shall intermarry with a white person, shall be punished, etc., does not mean only a full-blood African, but is synonymous with "colored person" as used in Code, chapter 103, section 2, providing that every person having one-fourth or more of negro blood shall be deemed a colored person. (*Jones v. Commonwealth*, 80 Va., 538, 542.)

By statute in Alabama, negro embraces all descendants of a negro to the third generation, though one ancestor of each generation should be a white person. (*Linton v. State*, 88 Ala., 219.)

In North Carolina it has been held that a negro is a person having in his veins one-sixteenth or more of African blood. (*State v. Chavers*, 5 (N. C.), 11; *State v. Watters*, 3 (N. C.), 455; *State v. Melton*, (N. C.) 40.)

In *People v. Hall* (4 Cal., 403) it was said: "The word 'black' may include all negroes, but the term negro does not include all black persons."

The next act on this subject, that of July 1, 1898 (30 U. S. Stat., pp. 571, 591).

That act, so far as is material here, reads as follows:

Appeals shall be allowed from the United States courts in the Indian Territory direct to the Supreme Court of the United States to either party, in all citizenship cases, and in all cases between either of the Five Civilized Tribes and the United States involving the constitutionality or validity of any legislation affecting citizenship, or the allotment of lands, in the Indian Territory, under the rules and regulations governing appeals to said court in other cases: *Provided*, That appeals in cases decided prior to this act must be perfected in one hundred and twenty days from its passage; and in cases decided subsequent thereto, within sixty days from final judgment; but in no such case shall the work of the Commission to the Five Civilized Tribes be enjoined or suspended by any proceeding in, or order of, any court, or of any judge, until after final judgment in the Supreme Court of the United States. In case of appeals, as aforesaid, it shall be the duty of the Supreme Court to advance such cases on the docket and dispose of the same as early as possible.

In a number of cases appeals were taken directly to the Supreme Court of the United States from the Indian Territory courts in 1896, under act of June 10, 1896. The Supreme Court did not touch on the two questions involved in the test suit in the citizenship case. It had no power to touch on those questions, provided it followed the legislation. True, this is a constitutional court, has the right to define its own jurisdiction, and its jurisdiction is defined by the

Constitution, and there may be some question about whether Congress could limit its jurisdiction, but Congress did do it, and the Supreme Court followed the action of Congress and limited its decision to the constitutionality of the legislation, and touched nothing else.

174 U. S., page 445, Stevens against Cherokee Nation. Here the court said, after referring to various decisions of the courts in the Indian Territory—

The CHAIRMAN. Federal courts, do you mean?

Mr. WARD. Federal courts for the Indian Territory.

Mr. MORSE. Were any of these judgments set aside by this tribunal?

Mr. WARD. Yes; and that, too, was sustained by the Supreme Court of the United States. I will reach that in a few moments.

I wish now to refer to what is known as the "court claimants." While it is necessary for Mansfield, McMurray's, and Cornish's name to enter more or less into this discussion, I want it distinctly understood that it is no part of my duty to defend them, and I do not want to be understood as doing it, nor the citizenship court, either. I know nothing about the charges that are being made.

Mr. MORSE. Admitting, for the sake of the argument, that the citizenship court referred to here was as corrupt as is charged, ought these claimants to have some redress?

Mr. WARD. The first thing is to prove it was corrupt. That is the first thing to do. Charges are very easily made, but proof is another thing.

Mr. MORSE. But if it were proven to the satisfaction of this committee that this court was corrupt, would it not be the duty of this committee to see that these people shall have their day in the United States court?

Mr. WARD. Of course if anybody was cut out by a corrupt court, he should be given an opportunity to be heard. Nobody will deny that, but the first question is to prove that the court was corrupt.

Mr. MORSE. Then the question recurs, as I asked you a few minutes ago; it becomes your duty then to defend that court, does it not?

Mr. WARD. It does not.

Mr. MORSE. In order to sustain your contention?

Mr. WARD. It does not; because the Supreme Court of the United States has passed on the question, and there is not a scintilla of evidence to show—there is not a scratch of a pen in our office, or anywhere else on the face of the earth that I know of, to show that that court was corrupt. If anyone can prove that that court was corrupt, let him come to the Interior Department and do so, and I have no hesitation in saying that in my opinion Mr. Garfield will be the first to go to Congress and say, "Here, let us correct this thing." But he can not take it up on charges and flimsy excuses.

Under the act of June 10, 1896, the Commission to the Five Civilized Tribes, and each tribe, could have and did have their own citizenship committee. The citizenship committee of the tribe had the same power to admit to citizenship that the Commission to the Five Civilized Tribes had. An appeal from either to the United States court in the Indian Territory would lie. But an appeal from one to the other would not lie. Their jurisdiction was equal.

Many appeals were taken to the United States courts, and in some instances the decision of the citizenship court or of the Commission was reversed and the person admitted. As I have shown you, these cases were frequently appealed to the Supreme Court of the United States and the constitutionality of the legislation passed on, and that was the only thing that was touched on.

Now, the act of June 28, 1898, provided, among other things, section 21.

By section 33 of the act of July 1, 1902, the supplemental agreement, the citizenship court was created. Its duties and powers were defined by sections 31 and 32, and possibly 34 of that act. The tribes were authorized to bring suit in the citizenship court, a test suit, known as the J. T. Riddle case. Ten persons were to be made defendants, and the language of the law is that if the decision of the citizenship court in the test suit was favorable to the nations, then all of the judgments rendered by the United States courts in 1896 should, by reason of that judgment, become null and be vacated. The action of the court, holding that the contentions of the nations were correct, vacated all of the judgments, and then it was provided by the act that, "in the event the citizenship judgments or decisions were annulled or vacated in the test suit hereinbefore mentioned because of either one or both of the irregularities claimed and insisted upon by the nation as aforesaid, then the files and papers and proceedings in any citizenship case in which the judgment or decision is so annulled or vacated shall, upon written application therefor, when made within ninety days thereafter,"—by whom?—"by the party thereto," the applicant, "who is thus deprived of a favorable judgment upon his claimed citizenship, be transferred and certified to said citizenship court, the court having custody and control of said files, papers, and proceedings, and upon the filing in said citizenship court of the files, papers, and proceedings in any such citizenship case, accompanied by due proof and notice in writing that the transfer and certification thereof has been given to the chief executive officer of each of said nations, said citizenship case shall be docketed in said citizenship court and such further proceedings shall be had therein" in that court as ought to have been had in the court to which the same was taken on appeal from the Commission to the Five Civilized Tribes, and as if no judgment or decision had been rendered therein.

The two questions involved were, first, Was it necessary to give both nations notice? That is, should the applicant have had service on the chief executive of the Choctaw Nation and the chief executive of the Chickasaw Nation in 1896 that his case was pending in the United States court? They only served one executive. The citizenship court held that that was necessary. Secondly, the point is, Did the court in 1896 have power to try a case de novo, or should it have passed on the record as made before the Commission to the Five Civilized Tribes or the citizenship committee? The court sustained the contention of the nations on both points, and said that the case should not have been tried de novo in 1896. Consequently every decision that has been rendered by the United States courts in 1896 were wiped out by this decision in the test suit, and it then became incumbent on the applicants to have the records in their cases transferred to the citizenship court, and there have their case reheard.

Now, I think there were about 3,400 persons whose cases were tried by the citizenship court, and that of that number something like 2,900 were rejected. I am not certain about these figures. This is simply from memory and I have not had the time to look them up in the annual report. In connection with this subject, I want to invite your attention to a decision in the Supreme Court of the United States in *ex parte U. S. Joins*. You see the Supreme Court of the United States had several whacks at this business, and there has never been a time that said court has held the legislation unconstitutional. Joins had the record in his case transferred to the citizenship court. Then he came here to the Supreme Court of the United States and filed an application for a writ of prohibition and certiorari. That case will be found in 191 United States (p. 93). The court said:

It is stated correctly by the answer that the act does not empower the citizenship court to do anything in the test case beyond rendering its judgment and certifying the same, as it has done. This being so, there is nothing which this court could prohibit, even if it were of opinion that the petitioner made out a good case on the merits, which we do not intimate. Therefore the writ must be denied.

In 1904 the Commission to the Five Civilized Tribes took the position that when the citizenship court wiped out the judgments rendered in 1896 and applicants did not have their cases certified to the citizenship court, that that ratified their decisions of 1896, and they passed the following resolution:

Resolved, That the status of these applicants—

Choctaw and Chickasaw—

in whose cases appeals to the Choctaw and Chickasaw citizenship court have not been taken, be considered by the Commission without reference to any action by the United States court in Indian Territory or by the Choctaw and Chickasaw citizenship court, and that the original judgment as entered by the Commission to the Five Civilized Tribes in 1896 be held valid and in full force and effect.

Now, under section 32 of the act the nations could have taken these people into court if they wanted to. But they were not compelled to. But the applicant was, under the law, compelled to take his case to that court. There was considerable correspondence about the subject between our office and the Department and the Commission, and it was finally submitted to the Attorney-General, who, on May 9, 1904, rendered a very exhaustive opinion, and I will quote from it briefly:

Any applicant deprived of a favorable judgment of the court by the decree in the test case has a right, within the time specified, to transfer his cause into the citizenship court and have the issues finally determined; but no right or transfer under such circumstances was given to the Indian.

The Indians could not transfer the case. They could only take the fellow into court, and the court would have the power to order the transfer of the record.

Where an applicant was admitted by the Commission and upon appeal such action was affirmed, and thereafter the decree of the United States court was declared null and void in the test case, the nations *could not* transfer the cause to the citizenship court; and if, as now claimed, the annulment *ex proprio vigore* gave efficacy to the appealed-from action of the Commission, then—the other parties being powerless to act—simple inaction by the applicant would

have perfected his right to citizenship, and the Indians, by prevailing in the test case, would have accomplished nothing.

In other words, to have followed the position taken by the Commission the fellow who went before the citizenship court and lost was cut out by going there, but the fellow who did not go there the decision of 1896 let him in. The Indians had no right to transfer a case, and, of course, under the conditions contended for by the Commission, the applicant would not have done so. Mr. Attorney-General further said:

I am of opinion that annulment of the United States court judgment affirming a favorable decision of the Commission to the Five Civilized Tribes upon an application for citizenship so far deprived the applicant of a favorable judgment as to devolve upon *him* the duty of causing his cause to be transferred to the citizenship court. I am further of opinion that annulment of the United States court judgment did not revive and put into force and effect the judgment of the Commission to the Five Civilized Tribes admitting such person to citizenship, and that enrollment by the Commission, based upon such a theory, would be a clear violation of the rights of the Indian nations.

Now, we have been to the United States court on the question of this legislation. Take the case of *Wallace v. Adams* (204 U. S., 415). That was a suit in ejectment brought in the United States court for the southern district of the Indian Territory in September, 1904, to recover possession of certain lands.

The court rendered judgment in favor of the plaintiffs. This judgment was sustained by the United States court of appeals for the Indian Territory and also by the United States court of appeals for the eighth circuit.

The Supreme Court syllabus said:

The power of Congress over citizenship in Indian tribes is plenary; it may adopt any reasonable method to ascertain who are citizens, and if one method is unsatisfactory it can try another; nor is its power exhausted because the first plan is by inquiry in a Territorial court. The functions of a Territorial court in such a case are those of a commission rather than of a court.

The act of July 1, 1902 (32 Stat., 641), creating the Choctaw and Chickasaw citizenship court and giving it power to examine, and in case of error found to annul judgments of courts of Indian Territory determining citizenship in the Choctaw and Chickasaw nations, was a valid exercise of power.

Congress has power to provide for the bringing of a suit in regard to citizenship in Indian tribes in a court of equity in which every class to be affected shall be represented, and that those not actually made parties but who belong to the classes represented shall be bound by the decree.

Citizens are bound to take notice of the legislation of Congress.

143 Fed. Rep., 716, affirmed.

Is it the contention of the people who are offering this legislation that this former legislation was unconstitutional or do they question the power of Congress to enact? Are they questioning the power of Congress to enact it or are they questioning the wisdom of the legislation itself?

Mr. MORSE. I can not see your reason for citing these opinions.

Mr. WARD. The action of the Government in enrolling these people in accordance with the laws, usages, and customs of the tribes is challenged. They say it was not right—that the law was not right.

Mr. MORSE. Not from a legal, but from an equitable standpoint.

Mr. WARD. I understand not only from equitable but from a legal. Now, with reference to the contract of Mansfield, McMurray, and Cornish, I would like to inquire of the committee if they understand

that our Department in any way had anything to do with the payment of that big fee or anything of that sort?

Mr. MORSE. The court allowed the fee, did it not?

Mr. WARD. Yes.

Mr. MORSE. The same court?

Mr. WARD. The citizenship court.

Mr. MORSE. The same court whose good faith they are questioning?

Mr. WARD. Yes; it was allowed by the citizenship court, and I will say that the Interior Department had nothing whatever to do with it; that when that contract was submitted for approval it was approved for not exceeding \$250,000 in the aggregate, and the attorneys were required to accept it as approved. They refused to do so, and they came to Congress and got through a law authorizing the citizenship court to fix their fee. Now, it is not a part of my duty to defend Mr. Beall, but in order that the committee may know the facts in the case, Mr. Beall was not discharged; he resigned.

The CHAIRMAN. Was he a member of the citizenship court?

Mr. WARD. Oh, no. The members of the citizenship court were Judges Adams, Foot, and Weaver.

The CHAIRMAN. Mr. Beall was a member of the Commission?

Mr. WARD. No; he was an employee.

Mr. MORSE. Mr. Beall was a member of the Dawes Commission.

Mr. WARD. No; he was an employee of the Dawes Commission and was secretary to the Commission for a time, and afterwards secretary to the Commissioner, Mr. Bixby, and was Acting Commissioner when Mr. Bixby was away.

The CHAIRMAN. My understanding of the contract, and the relation of the Interior Department to the contract with Mansfield, McMurray, and Cornish, as you stated, it was only recommended for a sum not to exceed \$250,000, and a judgement was obtained in a fight through the court, and the Interior Department was opposed to their receiving more than \$250,000.

Mr. WARD. Yes; as I recollect it. Of course I only know what I heard about it, and I think Secretary Hitchcock tried to prevent the payment of the amount.

Now, with reference to Mr. Beall, I have here a copy of a letter, which is dated January 25, 1906, but it should be 1907. That is a clerical mistake. It was received in our office January 28, 1907.

THE COMMISSIONER TO THE FIVE CIVILIZED TRIBES, MUSKOGEE, IND. T.

SIR: Changes in the personnel of your employees under act of Congress approved March 3, 1905 (33 Stats., 1060), are hereby approved as follows: Resignation: William O. Beall, of the District of Columbia, secretary to Commissioner, at \$2,500, effective January 31, 1907. Reported January 18, 1907.

E. A. HITCHCOCK, *Secretary*.

That is all I have to say.

Mr. MORSE. What appeal did the claimant have from the citizenship court?

Mr. WARD. None. Its decision was final.

Mr. MORSE. And this was the court that allowed this firm of attorneys this fee?

Mr. WARD. Yes, sir. And the judges of that court were appointed by the President under the authority contained in the act of July 1, 1902.

STATEMENT OF WEBSTER BALLINGER—REPLY.

Mr. BALLINGER. Mr. Chairman and gentlemen of the committee, we are very glad, indeed, that you have had an opportunity to-day to hear the interpretation of the law as we get it from the Indian Department. We object to that interpretation, and ask the common privilege of going into the courts and there have our cases passed upon in a judicial manner and by a judicial tribunal.

The treaty under which we claim gave to these people an absolute property right. It did not limit the property right to the person of mixed Indian and white blood, nor to the full blood, nor to any particular person, but gave the property to the person who was either a member of the Choctaw community in 1830 or who was a descendant of any such member. It has been contended up to to-day that the departmental officers were compelled by law to follow the tribal laws and customs in determining who were entitled to share in this trust property.

The constitutions of the two nations provided that no law should be enacted by either the Choctaw or the Chickasaw nations or the legislatures thereof that was in conflict with the Constitution, treaties, and laws of the United States. By this treaty of 1830 and the grant in 1842 an absolute property right passed to every member of the community. That property right could not be restricted by any tribal custom or tribal law, and it is fallacy to talk about such a thing. But the Supreme Court of the United States and the Court of Claims has likewise determined that question in a case in which you, Mr. Ward, undertook to impose upon another class of people a similar holding. What did the court say to you in that case? I read now from the case of the New York Indians *v.* United States (40 Ct. Claims), in which they attempted to follow a tribal custom and provide that the descent should be from the mother only; that if a full blood married a white woman his children were excluded. And if his son intermarried with a white woman his children were excluded, and the court says:

The United States were not interested in academic questions of Indian blood or Indian citizenship. Whether an Indian family of half bloods residing on an Indian reservation in the State of New York or the State of Wisconsin were children of white men or of white women was, for the purposes of the contract, abstract and irrelevant. That one such family should be called Indian and be allowed to go to the West to acquire lands of the United States, but that the other should be called white and not be allowed to go or to acquire lands, would be an incongruity utterly foreign to the intent of the agreement.

It is true that with the Iroquois, as with almost all Indian tribes, descent was through the mother. The Iroquois woman was the daughter of the tribe unchangeably, irrevocably. She could not marry within the tribe, for all who were born of the daughters of a tribe were brothers and sisters. When she married it was her husband who came to dwell in her tribe, and not she who passed over to his. If she married a white man she might live in his house and home, but when he died she could return to her kindred. Maid, wife, or widow, the Iroquois woman was always a daughter of her tribe, and her children were sons and daughters of her tribe; and they, with the sons and daughters of her tribal sisters, alone could be members of her tribe by birth-right. Therefore it was that the daughters of the tribe were the mothers of the tribe, and they only. No man could be a son of the tribe unless he was a son of a daughter of the tribe. The Indians, therefore, held that as a white woman was not the daughter of a tribe, she, on the death of her husband, had no tribe; that she was what she had been—a stranger, an alien, an

outcast, and not an Indian. It followed that her children were what she was, exiles without a tribe, and strangers, not of Indian blood.

This was the logical, inexorable result of Indian law; but the practical results which would come from attempting to carry out the purpose of the treaty according to this Indian law, instead of according to the manifest purpose of the contracting parties, is well illustrated in a case stated by claimant's counsel. A full-blooded Seneca Indian married a white woman. The daughter of that union was in fact one-half Indian, but according to Seneca law wholly white. She married a full-blooded Seneca, and her daughter, three-fourths Indian, was still, by Seneca law, wholly white. Her daughter, three-fourths Indian, married a full-blooded Seneca, and her daughter, seven-eighths Indian, was still, according to Seneca law, wholly white. Finally, the children of this woman, though their father might be a full-blooded Seneca Indian and they have fifteen-sixteenths Seneca blood in their veins, would still, in Indian legal estimation, be wholly white.

The court then disposed of this whole question, and held that to be a fallacy; that the people who are members of a community, regardless of Indian custom or Indian tribal law, were members of that community and entitled to participate in the tribal property, and decreed that the only test should be that the person claiming should be a descendant of an ancestor who was a member of that Indian community when the treaty was made. I believe in 1898 the laws which Congress enacted were unwise in one respect. They made property rights in these nations dependent upon citizenship. I will not say they made it, but they provided that the enrollment of persons at that time should be the enrollment of citizens of the tribe.

Now, Mr. Chairman, citizenship can not control property rights in a tribe with property held as this property was. This was a grant absolutely from the United States to these people in fee simple. If the United States held the title, or if the United States had any interest in the property, the contention of the Indian Office might be correct, but if the title to this land passed absolutely in 1830, and certainly by the grant in 1842, from the Government, and from that time to the present moment no Government officer, no court, or anyone else has ever claimed that the Government of the United States had any title to it or any rights in it, except the right to see that this trust was administered in strict conformity with the terms and provisions of that grant, then the holding was erroneous. The Congressional legislation enacted directed this Commission to follow the treaty, and Mr. Ward, who has just preceded me, well knows that to be the fact. The act of 1896 directed that Commission to do this:

And said Commission is directed to continue the exercise of the authority already conferred upon them by law and endeavor to accomplish the objects heretofore prescribed to them and report from time to time to Congress.

That said Commission is further authorized and directed to proceed at once to hear and determine the application of all persons who may apply to them for citizenship in any of said nations, and after said hearing they shall determine the right of said applicant to be so admitted and enrolled: *Provided, however,* That such application shall be made to such commissioners within three months after the passage of this act. The said Commission shall decide all such applications within ninety days after the same shall be made. That in determining all such applications said Commission shall respect all laws of the several nations or tribes, not inconsistent with the laws of the United States, and all treaties with either of said nations or tribes, and shall give due force and effect to the rolls, usages, and customs of each of said nations or tribes: *And provided further,* That the rolls of citizenship of the several tribes as now existing are hereby confirmed, and any person who shall claim to be entitled to be added to said rolls as a citizen of either of said tribes and whose right thereto has either been denied or not acted upon, or any citizen who may within three months from and after the passage of this act desire such citizen-

ship, may apply to the legally constituted court or committee designated by the several tribes for such citizenship, and such court or committee shall determine such application within thirty days from the date thereof.

Mr. Chairman, that placed the treaties with these tribes paramount to any tribal law, and yet the Department insists upon following the tribal laws and tribal customs as against the provisions of that treaty. We object to such an interpretation of the law as that by your Department. We shall continue to object to such an interpretation of the law as that, and we shall never stop until we secure the enactment of some legislation that will enable us to go into a court and permit that court to determine the construction of the law and thereby determine our property rights.

Now there has been a dissertation upon the decisions of the Supreme Court in these cases. Mr. Chairman, in neither the Stephens case nor in the Joins case, nor in any other case passed upon by the Supreme Court has the question of the property rights of these people ever been determined. In every case it was a question of citizenship—a political question that Congress could deal with—but never in any case has the court passed upon the question of property rights, and Mr. Ward, you well know that to be the fact. The first time that question was ever raised, Mr. Chairman, myself and my associate raised it in a case that is now pending in St. Louis. Your officers, or the officers of the Department, met us at the threshold of the controversy with a challenge to the jurisdiction of the court. You were afraid to permit us to go into a court; you know well what the judgment of that court will be.

The CHAIRMAN. Just one question. There is some sort of a case now pending; I do not know anything about the contents of the petition or the allegations, with reference to the property rights of these people.

Mr. BALLINGER. There is a case styled "*Bettie Ligon et al. v. D. H. Johnson et al.*," that is now submitted to the circuit court of appeals at St. Louis.

The CHAIRMAN. Briefly, what is the nature of that case?

Mr. BALLINGER. That case runs to the rights of those persons of mixed Indian and negro blood who were arbitrarily and against their protest enrolled as negroes and who have been arbitrarily and against their protest allotted lands as negroes. Many of them refused to take their allotments, and they contend that they have been enrolled arbitrarily as freedmen and have been allotted arbitrarily certain lands as such. They have refused to take them. Patent after patent has been sent to these people. We have returned these patents to the Commission, and our clients have returned to the Commission numerous patents that you have sent through the mails to these people endeavoring to get them to take them. They have refused, and they will continue to refuse until some court passes upon their rights.

The CHAIRMAN. It is your contention that you can not have this relief except through legislation of this kind—that is, you can not gain these cases?

Mr. BALLINGER. We can not for a certainty. The condition in Oklahoma is such that these questions must be settled, and they must be settled soon, otherwise this property will practically be confiscated. It can not be held intact much longer. There must be relief

from it in some way, and while I believe that under existing law, by reason of the nature of this title, we have a remedy in court, I want legislation that will settle it; that will stop these administrative officers from challenging the jurisdiction of every court and making us come here to the Supreme Court of the United States on a preliminary motion, viz, a demurrer to the jurisdiction of the court.

The CHAIRMAN. That is what I wanted to get at. I want the particular point of advantage in this bill.

Mr. BALLINGER. This bill, if enacted, will solve these questions. If these people have no rights it will quickly be determined. A few suits under this bill will determine the rights of these parties, if they have rights, and it will put an end to this controversy, which if allowed to run along, will put that country in a turmoil of litigation for years to come. No man can prophesy the end of it. And, Mr. Chairman, I appeal to you in the interests of these people we represent, to give them an opportunity to go into the courts and have their rights judicially determined. They have never been before any court. They never will get a judicial determination of their rights if it is left to the administrative officers. Their judgments in their opinion are infallible; there can be no mistake; they are final, and they object to us even raising a question about the accuracy of those judgments. They object to us going into a court to test them. Mr. Chairman, I submit with all seriousness to this committee that the condition existing there is outrageous. It ought not to be tolerated, and surely this committee will not permit it to continue longer. If you have the power to consummate this wrong you would not do it, because your own instincts of fairness and justice would preclude that. Give us an opportunity to go into the courts; give us an opportunity to determine the rights of these people. That is all they ask. You have given it to every other person within this land but these people. Why deny it to them?

Mr. STEPHENS. About how many persons do you think were taken off the rolls by this citizenship court?

Mr. BALLINGER. Over 4,000.

Mr. STEPHENS. I would like to inquire whether or not any of these people will lose their homes, and if so, how long have they been living in these homes?

Mr. BALLINGER. They were enrolled by judgment of the courts, rendered in 1897 and 1898, and I am not certain but what as late as 1899. They selected their lands and went into possession of their land: many of them spent everything in the world they had in improving these lands. Then came this unique legislative court that upset the judgments of the United States courts, and now these people, while holding the possession of their land, hold them against the protest of the Department, and will continue to hold them, Mr. Chairman, unless they are shot down and carried off by the administrative officers.

Mr. STEPHENS. Was the land allotted to the person?

Mr. BALLINGER. That same land that these people selected and upon which they have made their homes has been allotted to other persons, and they hold the legal title by patent issued by the tribal officials and approved by the Secretary of the Interior.

The CHAIRMAN. You recognize that under the law and the testimony these people were intruders. For instance, if I would go on an Indian reservation and under color of right improve a farm, when

the time came for allotment and distribution or dividing up of the common property of the tribe, if it was found that I was not entitled to receive a share with the members of the tribe, the mere fact that I had expended money and labor would simply raise as a kind of sentiment. If any person there has made improvements, if he knew they were wrongfully made, then it is only a question of sentiment. If he has gone there rightly and made his improvements, of course then he should have his rights.

Mr. BALLINGER. I have never yet raised my voice in behalf of any person who was claiming something he was not entitled to. These people went there under judgment of the district court in Oklahoma.

Mr. STEVENS. Under acts of Congress?

Mr. BALLINGER. Under acts of Congress, which provided that the decisions of these courts should be final. There may have been some fraud that entered into some particular case, but, Mr. Chairman, in the great majority of those cases the judgments of the district courts were not obtained by fraud.

The CHAIRMAN. I was only assuming a case. I was not undertaking to say anything about whether they had or had not. I was assuming a case where parties may have gotten in and made claim under color of title to the tribal advantages, and because of this claim of tribal rights had made certain improvements.

Mr. BALLINGER. I think in that case he went there at his own peril. But these people were children of the signers of the treaty of 1830. I have one case that I referred to here, John T. Williams, who lives at Swink, Okla. Ambrose Williams was his father, and signed the treaty of 1830 and his name appears upon that treaty. And he is only one person who is stricken down by the judgment of this citizenship court.

Mr. STEVENS. Has he lived in the country all the while?

Mr. BALLINGER. He has lived there for years and years, was a bona fide resident in 1898, and has always been recognized as such, and he and his children are interpreters for the Choctaws. These people have been recognized by the tribal authorities, but the recognition of the tribal authorities under the law amounted to nothing. I appeal to you gentlemen to afford these people some kind of relief.

STATEMENT OF MR. JAMES POOLE.

Mr. POOLE. I only wish to call the attention of the committee to the fact that from the manner in which this thing has been argued it would appear that there was no one concerned in this bill except the people who had had some show in court. I represent Indians, I don't represent court citizens. I don't represent niggers, I don't represent half-breeds, but I represent Indians. The persons denied citizenship by the Commission to the Five Civilized Tribes have never been in a court in their lives. This bill takes them in. Born and raised in the Indian Territory, some of them seven-eighths Choctaws, some of them half-breeds, their parents brought there by the Government years ago, and they are there yet. I have that class of people, who have not been mentioned. I just wanted to call your attention to the

fact that this class of people are included in this bill as well as those others.

Mr. STEPHENS. For what reason have they been excluded?

Mr. POOLE. God only knows.

Mr. STEPHENS. Have they made application?

Mr. POOLE. Yes; we have made application.

Mr. STEPHENS. Who rejected them?

Mr. POOLE. This Commission and the Department up here.

Mr. STEPHENS. For what reason?

Mr. POOLE. We filed motion after motion asking, and I have never got a reason yet, and the only thing they say is that the testimony is insufficient to identify them as Mississippi Choctaws, and they refuse to pass upon them as Indians.

Mr. WARD. Are you not aware that many of them were rejected in 1896 and Congress passed an act providing that the Commission to the Five Civilized Tribes should continue to exercise the same authority as it had formerly and that it should enroll only persons whose names appeared on some roll of the tribe, and, furthermore, there was a time limit within which they could make an application?

There was no provision for new applications after 1896. Now, we tried to correct that, the committee of which I was a member, who drew the act of April 26, 1906. We tried to correct that by providing that any person who had applied prior to December 1—possibly December 31, 1905—do you remember, Mr. Ballinger?

Mr. BALLINGER. I don't know what act you refer to.

Mr. WARD. Act approved April 26, 1906, that any person who had applied prior to December 1 or 31, 1905, might have his application considered.

Mr. BALLINGER. What act of Congress provided that no person should be enrolled unless recognized by the tribal authorities?

Mr. WARD. The act of May 31, 1900.

Mr. BALLINGER. In the act of 1898, under which we are proceeding, no application was made. The Commission was directed to go out and beat the bush and corral them.

Mr. WARD. The Assistant Attorney-General holds otherwise. He holds that an application was necessary, and that the law of 1898 did not provide for new applications.

Mr. STEPHENS. Mr. Ward, do you think that on such cases as this gentleman has stated here, men who have been known to be Indians for life, born and raised there, and have lived there all their life, that by act of Congress or courts or anyone else they should be deprived?

Mr. WARD. They have had their day in court. They have had a chance to prove up.

Mr. STEPHENS. Did you ever know of any chancery court on earth that would deprive the heirs of their rights of inheritance because that heir had not prosecuted his claim sooner?

Mr. WARD. Oh, they did prosecute their claim.

Mr. STEPHENS. Wasn't it the duty of the Government to find out the heirs?

Mr. WARD. The Government did everything in its power. The Commission sent out field parties and tried to locate them.

Mr. STEPHENS. Here is a gentleman who says they have been doing everything they can for years to get on the rolls.

Mr. WARD. What class are they? The class Mr. Poole is talking about, the class known as the Mississippi Choctaws. The treaty of 1830, article 14, provided that any of the Indians who wanted to stay in Mississippi and become citizens of the State might do so, but that if they ever removed to the Indian Territory they should not lose their right of citizenship. Now, I think it is the act of July 1, 1902, that provided for the identification and enrollment of full-blood Mississippi Choctaws by reason of their blood alone and that the mixed blood who had received a patent to land in Mississippi and had complied with the provision of the treaty should be enrolled, but that the mixed blood who had not complied with the provisions of the treaty could not be enrolled. The Interior Department held that the subsequent acts of 1837 and 1842, under which they were issued scrip, was a substantial compliance with the treaty of 1830, that those persons who received scrip were entitled to identification and enrollment.

Mr. STEPHENS. It is only the question of justice and right that the House is looking to.

STATEMENT OF MR. E. C. HILL, REPRESENTING THE CHOCTAW NATION.

Mr. HILL. It is not my purpose to detain the committee with an argument upon any matters that have been discussed before the committee. I simply want, in behalf of the Choctaw Nation tribe of Indians, to protest against any further opening of the rules or the passage of any bill that authorizes people to present any claims for any part of the land. And I say that for this reason—not that it is the desire of the Choctaw Nation or my desire to be unjust to anybody—I have no doubt that there are isolated cases where people, not a great multitude of cases, that the tribunal created by the Government to pass upon these matters have failed to include, that are bona fide cases. Here and there you will find a bona fide case of an Indian who was entitled to be upon the rolls and share in the distribution of the tribal property, and either through some fault of his own or through some fault somewhere he has failed to get upon the rolls.

Mr. STEPHENS. Don't you think the Government would be morally bound to make good that man's fault?

Mr. HILL. If it could be done—if these bona fide cases could be selected out.

Mr. STEPHENS. Could not justice be done them now? Isn't there quite an amount of land or property there that is undivided and isn't there a great deal of money coming to these Indians that is undivided?

Mr. HILL. Yes, sir.

Mr. STEPHENS. The Government has notice right now that these people are claiming it.

Mr. HILL. Yes, sir.

Mr. STEPHENS. And this matter will come up before future Congresses.

Mr. HILL. Yes, sir. There is the trouble about it. But there are people on the other side that are affected, too. Yet, I say, if only the people who are rightfully to share in the distribution of this prop-

erty could be selected and given their rights, the Indians or nobody else could object to it, because it would be right and it would be just. If any way could be provided by which the people who are honestly and rightfully entitled to share in this property—if any way could be provided by which that could be done, it ought to be done. But here is the trouble: The experience of individual cases shows that those people who are not now entered upon the rolls have made application there. If this bill passes it furnishes the same opportunity again, and every foot of property that you take from the nation down there or from these Indians and distribute it to anybody else it deprives them of that much.

Now, I would like to ask Mr. Ballinger, under section 2 of this bill, how many people would be authorized to bring suit?

Mr. BALLINGER. Every person who had the right.

Mr. HILL. How many of them?

Mr. BALLINGER. I am frank to say that I believe under the provisions of that bill there will be upward of 10,000 people.

Mr. HILL. Yes; and twice that, and in every State of this Union. Under the provisions of this bill anywhere in this Union a man has nothing to do but to file his petition and claim that he is an Indian, and that in any United States court in this Union, and have his rights tested there, and look at the enormous expense, Mr. Chairman, that a thing of that sort would bring about.

Mr. STEPHENS. Would you be willing to amend that bill so as not to only apply to citizens in Oklahoma?

Mr. HILL. Gentlemen of the committee, I asked the chairman for five minutes, and I don't want to run over the time. This is the first time I ever appeared before you with reference to this matter. I will be candid with Colonel Stephens, whom I know well, for whom I have the highest regard, and I have known him for a number of years. I used to live in his district and have got lots of folks living there now. But I will be candid with him and say I would pass that bill for the reasons I have stated, that if the people who are interested in this property only would be affected. Now, gentlemen, you overlook this fact, that for years and years down there the Federal courts have tried to give every man his opportunity to come in and prove his rights—no man has been denied his rights—and time after time Congress by act has extended that right and notified these people to come in and prove up their rights.

Congress has given the means for that purpose. Congress thought and the Federal Government has thought it would be best to put that under the direction of the Federal Government, and they created the power to go and present these matters and to pass upon the rights of these people, and they did it. They have passed upon the rights of thousands and thousands of people, and, gentlemen of the committee, thousands of the people have been denied citizenship rights there by the Dawes Commission. It is a power created by Congress to pass upon those things. And if this bill is passed all of those people, and I believe Mr. Ballinger will admit that every man who made application before the Dawes Commission and was rejected can bring suit under this bill—

Mr. BALLINGER. Every man who claims a right in this property will have an opportunity to assert that right in court and have his

case heard in open court and have his right legally and constitutionally determined.

The CHAIRMAN. Pardon me one question. Of course it could only be a matter of rumor, in case there was any such rumor, but have you heard any complaint to the effect that any persons were admitted to the rolls who were not entitled to enrollment?

Mr. HILL. Yes, there has been a great deal of complaint. I had intended to suggest it.

Mr. CHAIRMAN. I only ask you as going to the integrity of the court. You know how it occurred.

Mr. HILL. I do not mean by my answer to imply that anybody was admitted improperly, you will understand that, but I do mean that thousands of cases that the Commission had to consider, it was given authority to inquire into these things, and I have never heard that people have been admitted to the rolls and have a share in the distribution of the property that ought not to be there.

Now, gentlemen, this point upon what is charged to be the fraud of the court, corruption upon the part of the court. This is a very serious matter. I had nothing to do with the court one way or the other. I didn't have but one little old case before it, and I lost that, and that was the end of my connection with it. So I had nothing to do with the court one way or the other. But I do say this, and I am frank to say it, that if a corrupt court has denied anybody their rights then they ought to have a hearing, if a corrupt court has done it. But I do say that a court appointed by the President of the United States, men at least particularly of a kind and character and standing and their appointment ratified by the Senate. I do say that before such a stigma of that sort is cast upon the members of that court there ought to be some substantial proof, and that fact at least should be thoroughly established. And if it is thoroughly established that that court was corrupt or has acted corruptly, I believe every man who has been turned down by the court ought to have a hearing. I believe that is the right course, and I don't believe any man ought to be denied his rights by people acting corruptly, because the people quite generally ought to have confidence in a court who are there to administer justice, and they ought to act thoroughly and impartially, and are supposed to do so.

Mr. STEPHENS. Is it true that there was between two and three thousand of these people that were put upon the rolls that had the judgments of the Federal courts of the country there that were rejected by the citizenship courts?

Mr. HILL. I understand that there are large numbers. Perhaps it may be that many that had secured judgments in the United States district courts and afterwards were denied citizenship by the citizenship court. But you must remember there was reason for the creation of that citizenship court. These judgments were secured before that court was ever created. Congress thought there was some necessity for the creation of that citizenship court to review those judgments, and reasons were urged upon Congress as to why that court ought to be created, and I don't know what they were, I had nothing to do with it one way or the other, yet Congress did decide in its judgment and in its wisdom that that court ought to be created to review these judgments, and it did so. And now this

court, which they charge acted corruptly, this court denied hundreds and perhaps as many as two or three thousand who had secured judgments, denied them citizenship rights.

Mr. STEPHENS. Isn't it true that a great number of those people who were on the rolls never were cited before the citizenship court at all, but they took them up in blocks—a block of three or four or five hundred or a thousand at a time—and that they were all put together in a class and it was decided that that class should be deprived of their judgments, and the clerk or somebody else, I don't know who, would run over the list and throw them out, when the person never had been cited in the court; they had never been called in court at all, and therefore the judgments were annulled without their being before the court upon citation?

Mr. HILL. I never heard of that.

Mr. STEPHENS. The records of the court will show that to have occurred. There are hundreds of those people who had judgments in their favor rendered in the United States courts in the regular way, that stood there as citizens of the country, and who never have appeared in that court, yet by some false construction of the statute they have lost their rights and everything they have got in the world.

Mr. HILL. As I said, I had very little to do with that court; I had no business before it, and had very little to do with the lawyers there generally. McAlester took a great deal of interest in that court, especially when it was first organized. There were constant trials before that court of these citizenship cases, and nearly all of the lawyers in McAlester were more or less engaged in those trials, and if any man was ever denied his rights and his opportunity to be heard there, either personally or through his attorney, I never heard of it. Understand, Colonel, I am not saying that that is not true. You will understand that if anything of that sort ever occurred, I never heard of it. I forget now how long that court lasted—

Mr. WARD. About eighteen months. I think, from the time it organized until it went out of existence.

Mr. HILL. That court held almost daily sessions for eighteen months at McAlester and Tishmingo, and if there was any man in that country that did not have opportunity to come before that court I never heard of it.

Now, gentlemen of the committee, I simply want to say this to you in good faith and in behalf of the Choctaw Indians, whom I represent; I have nothing to do with the Chickasaws; I have no authority to represent them and I do not represent them, I simply want to ask the most careful consideration of this bill and its results before you pass it. Now, Mr. Chairman, this has got to end some time. As Colonel McGuire knows, the people of our country have been praying generally that this thing might finally be wound up, that there might be an end and a settlement of it, and now the extension of it is proposed in this bill. For ten or twelve years these people had their opportunity to establish their rights there. The tribunals have been open to them at all times, and not only have the representatives of the Commission, under the directions and instructions of the Interior Department, given them notice to come, but the Commission have gone personally and held sessions at various points of the country, and sent its representatives there and by every means pos-

sible undertook to give proper notice to the people who are claiming rights of citizenship to come in and establish their rights before the rolls were closed. It is claimed that there were thousands of people that did not do that, that did not have that privilege—hundreds, as Captain Poole said, it may be thousands, in addition to those who were denied by the citizenship court.

Mr. POOLE. No, sir; you misunderstand me. My people applied to the Commission, and the proof and the records are here for anybody to see them, and they were turned down, and they never have had an opportunity to appear before the court. I don't call the Commission a court. I suppose you gentlemen term that a court, but this was a commission and not a court.

Mr. HILL. The Supreme Court of the United States has held that in a tribunal of that sort for the determination of these special matters their action is final. Many times these questions have arisen in the courts, and our Federal courts there have refused to take jurisdiction where these questions of citizenship were involved, for the reason that the tribunal created by Congress had jurisdiction of that, and not the courts. But they have had the tribunal there created by law, which has tried as best they could to determine the rights of the people in that country, and I say that in the thousands of cases that have arisen there they may have made mistakes, and probably did, but I believe, take it as a whole, that they have done the very best that could have been done under the circumstances.

If you pass this bill you will allow men anywhere—in Alaska and anywhere else in the United States—they can sue these people, and this bill requires that the nation shall be served with notice. It is their property that is to be taken. If these people appear and secure a judgment it is the property of these Indians that is to be taken by these people from all over the United States, and so I say it would be extremely unjust. Ordinarily, if you want to sue a man the law requires that you have got to sue him where he lives, even in the precinct where he lives, if you are going to institute a proceeding against him and bring him to court, yet under the provisions of this bill you allow the Indians to be dragged all over the United States, wherever they may see fit to sue them. I respectfully ask at the hands of the committee and of Congress a consideration of this bill and of its results before its passage is recommended.

The CHAIRMAN. This concludes the hearings that have been asked for, and the committee will consider itself adjourned.

Thereupon, at 4 o'clock p. m., the committee adjourned.

INDIAN DEPREDATIONS

HEARINGS

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
HOUSE OF REPRESENTATIVES

1908



WASHINGTON
GOVERNMENT PRINTING OFFICE

1908

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INDIAN DEPREDACTIONS.

COMMITTEE ON INDIAN AFFAIRS,
HOUSE OF REPRESENTATIVES,
Thursday, February 27, 1908.

The committee met this day at 10.45 o'clock a. m., Hon. James S. Sherman (chairman) presiding.

The CHAIRMAN. The order of the day is the consideration of House bills No. 125, No. 3889, No. 7684, No. 11316, and No. 11797, relating to Indian depredations. Who are here to be heard this morning?

Mr. STEPHENS. Mr. Chairman, I wish to say that I abandon House bill No. 125 and substitute House bill No. 11316.

The CHAIRMAN. House bill No. 125 is abandoned and House bill No. 11316 takes its place. Is there objection to laying bill No. 125 on the table? There being no objection it is so ordered, and House bill No. 125 is laid on the table. Now, who is here to be heard?

Mr. LINCOLN B. SMITH, assistant attorney, Department of Justice. Judge Thompson, who is in charge of these cases, is out of town, Mr. Chairman, and I come to represent him in his place.

The CHAIRMAN. What is your name?

Mr. SMITH. Lincoln B. Smith.

The CHAIRMAN. You are against the bills?

Mr. SMITH. No, sir; neither for nor against; but I am here to answer any questions that the committee may desire to ask of me.

The CHAIRMAN. Is there anybody else who desires to be heard?

Mr. STEPHENS. Mr. Garner is here, and he has a bill.

Representative GARNER, of Texas. I simply wanted to call attention to the bill which I introduced, No. 3889.

The CHAIRMAN. I think it would be better to have a hearing on the general subject, and later on, when we get into executive session, we can determine which, if any of these bills, is the one we will consider.

Mr. Robeson, how much time do you require?

Mr. GARNER. The question of citizenship is the only question I wish to be heard on.

The CHAIRMAN. Mr. Robeson, how much time do you wish?

STATEMENT OF MR. WILLIAM H. ROBESON, OF WASHINGTON, D. C.

Mr. ROBESON. I would like to have as much time as you can give me. If the committee gets tired you can stop me. When the committee heard me before they gave me four hours on two days.

The CHAIRMAN. If you can not speak fully and to your satisfaction this morning, you can be permitted to speak again. Gentlemen, Mr. Robeson is a counselor at law, of Washington, D. C., and comes here advocating House bill No. 11316.

Mr. ROBESON. Mr. Chairman and gentlemen of the committee, as early as the year 1796 Congress guaranteed "eventual indemnification" for depredations committed by Indians upon the property of citizens or inhabitants of the United States. That act was renewed in 1802, and it finally was embodied in what is known as the "trade and intercourse act," of June 30, 1834. This trade and intercourse act provided that if any Indian, not in the Indian country, should commit a depredation on the property of any citizen or inhabitant of the United States, that citizen or inhabitant might make application to the President of the United States, who would recommend such action as in his judgment and wisdom seemed proper. That act was repealed by an act of February 28, 1859; but about the same time Congress passed a statute which now forms section 2156 of the Revised Statutes. It is in effect a reenactment of the trade and intercourse act, except as to the guaranty of the United States, providing, however, that the liability of the Indians for depredations to be paid out of their annuities should be continued.

In 1872 the Secretary of the Interior was authorized to examine and investigate claims for Indian depredations which had been filed in his Department, and to make report of his acts thereon to Congress.

Mr. STEPHENS. Can you cite to us the law?

Mr. ROBESON. It is the act of May 29, 1872, found in Seventeenth Statutes at Large, page 190.

In March or April, 1904, this committee did me the kindness to hear me at some length on a similar bill. My associate has here printed copies of this hearing, and I would like the committee to have that before them in the course of this argument. All those acts that I have referred to are set out in the appendix to that printed copy of the hearings.

The CHAIRMAN. Is that a House document?

Mr. ROBESON. No; a hearing before the committee.

The CHAIRMAN. Very good.

Mr. ROBESON. In 1885 still another act was passed, which gave the Secretary of the Interior the power to appoint special agents who should make an independent investigation on the part of the United States, and should take testimony. Upon that testimony the Secretary was to examine the claims, and if he approved them he should allow them in such sum as he judged to be just and report the same to Congress. Under the authority of this last act the Secretary of the Interior examined, approved, and allowed some 700 or 800 acres, which were duly reported to Congress, and some of them paid. In the course of my remarks I shall refer to those as "allowed cases."

In March, 1891, Congress passed the present Indian depredations act, conferring jurisdiction on the Court of Claims in cases of this character. It is directed in the first section of that act that the Court of Claims shall have jurisdiction to hear and adjudicate "all claims for property of citizens of the United States taken or destroyed by Indians belonging to any band, tribe, or nation, in amity with the United States, without just cause or provocation on the part of the owner or agent in charge, and not returned or paid for." You will find that in the first supplement to the Revised Statutes of the United States at page 913.

The court was also given authority to pass upon those cases which had been examined, approved, and allowed and reported to Congress

by the Secretary of the Interior. In the act it was provided that where there had been an allowance by the Secretary, unless one or the other party, the claimant or the defendant, elected to reopen the case the duty of the court was limited to rendering a pro forma judgment in the amount found to be due by the Secretary of the Interior.

Under that act these things were necessary: First, that the claimant be a citizen of the United States; second, that the Indians committing the depredation be members of a tribe or band or nation in amity with the United States. And under the decisions of the court it has resulted that the citizenship relates back to the date of the depredation, the decisions being numerous that the claimant must have been a citizen at the time of his loss. It has resulted also in decisions of the Court of Claims, which have been affirmed by the Supreme Court of the United States, declaring the words "in amity" to mean "relations of actual peace."

I should say at this point that in connection with my associate, Mr. Harry Peyton, and the assistant attorney, Mr. Lincoln B. Smith, of the Department of Justice, I also represented the Government in the arguments upon the construction of the act before the Court of Claims; and I claimed, and my associates also, that the words "in amity" were intended to exclude claims for losses occasioned by Indians when engaged in actual warfare. But the Court of Claims did not accept the definition proposed by the Government at that time. It went further and declared that the words "in amity" meant "relations of actual peace."

Between these two definitions you will see there is a very wide difference. We have had some open and notorious wars with the Indians, during which property was destroyed, and such claims as that, under the definition of the Court of Claims, would be properly excluded from the jurisdiction of the court. But when the courts find that the words mean "in relations of actual peace" the committee will see at once the difficulties that might arise respecting the jurisdiction of the Court of Claims and the right of the claimant to recover, because frequently there were no relations at all between the Indians and the United States.

To illustrate: In the Territory of Arizona, where there are many bands of Indians, there is a band known as the Tonto Apaches. History is silent up to 1870 regarding these Tonto Apaches. Possibly an Indian agent out in that country who had never seen a Tonto Apache in his life would include in his reports some reference to them; but between those Indians and the United States there were no relations—neither of actual peace nor war. They were savages; but they took the property of citizens and inhabitants of the United States, who can not recover for their losses because of this definition given by the courts to the words "in amity with the United States."

The bill introduced by Representative Garner, No. 3889, is a bill which goes only to remove the requirement of citizenship. The bill No. 7684, introduced by Mr. Andrews, is a bill which I feel justified in saying Mr. Andrews is willing not to have considered in this connection, inasmuch as he is favoring the bill I am discussing, namely, bill No. 11316. Mr. Andrews also introduced a bill, No. 11797, which is, so far as I can see, an exact duplicate of the bill introduced by Mr. Stephens, the bill No. 11316.

Mr. HACKNEY. The bill No. 11797 is Mr. Andrews's second bill.

The CHAIRMAN. Is there objection to laying on the table House bill No. 7684? If there is no objection, that will be so ordered.

Mr. ROBESON. I have no authority from Mr. Andrews, but I say Mr. Andrews favors this bill. He introduced an exact copy of the bill introduced by Mr. Stephens.

The CHAIRMAN. I understood you to say that Mr. Andrews did not want this bill to be considered. I do not want to lay on the table one of Mr. Andrews's bills without his authorization.

Mr. ROBESON. I should not wish to do that without Mr. Andrews's knowledge.

The CHAIRMAN. Very well, then; what we did a moment ago will be expunged from the record.

Mr. ROBESON. The first section of the House bill No. 11316 is in these words, after the enacting clause conferring jurisdiction on the Court of Claims:

First. All claims for property of citizens of the United States, or inhabitants thereof who have since become, or shall hereafter become, or whose heirs are or shall hereafter become, citizens of the United States, taken or destroyed within the limits of the United States by Indians belonging to any tribe or nation subject to the jurisdiction of the United States, without just cause or provocation on the part of the owner or agent in charge, and not returned or paid for; and the alienage of the claimant, provided he is or may hereafter become a citizen, or the alienage of his heirs, provided they are or may hereafter become citizens of the United States, or the want of amity of the defendant Indians, shall not be a defense to said claim.

This bill provides, therefore, first for inhabitants. Now, gentlemen of the committee, the word "inhabitants" never left the law from 1796 down to the passage of this act of March 3, 1891. From 1796 on down this promise has been made to inhabitants as well as to citizens, and why not? Why was the promise made at all? We had our western country in 1834. It was not settled. In 1796 the western country was what is now in the effete East. We wanted that country settled, so we proposed to afford protection to those people who would go out into that country and settle and develop it. Were there fewer reasons to make such a proposition to an inhabitant than to a citizen? Congress thought not, because in every one of these acts from 1796 to 1891 the promise of indemnification was made to inhabitants as well as to citizens.

Let me give you some illustrations: Henry H. Woodward, an Englishman, came to Oregon in the late forties. In the various wars that disturbed that State up to 1856 that man served as a faithful soldier of the United States. He declared his intention to become a citizen of the United States soon after reaching Oregon. He has lived continuously in the town of Roseburg, and is an honored citizen of that town. He lost some property out there. He has voted continuously. He was not a citizen of the United States when the loss of his property occurred, and is therefore denied a recovery.

When we acquired the republic of Texas, we ought to have taken into the citizenship of the United States every person who came in by the act of annexation, but we did not do it. The republic of Texas had declared in a statute that every person residing in Texas at the time of the adoption of the constitution in 1836 should be considered a citizen of the State; but it had also its scheme of naturalization, so that when we took over Texas, only those persons resident at the time of the adoption of that constitution of 1836 and those who took ad-

vantage of the naturalization laws became citizens of the United States. John N. Gauney, a resident of the town of San Saba, served in the navy of the republic of Texas. He came over, of course, with the State of Texas into the United States. He was elected for five terms of four years each as county clerk of his county; never has failed to cast his vote; has always been a revered citizen of that community. He was not in Texas at the time of the adoption of the constitution. He never availed himself of the naturalization laws, and his service in the navy of Texas, which service of course contributed to our interest, conferred upon him no right to prosecute a claim that he had against Indians for depredations in Texas, and he can not recover under the law.

Michael J. Daley, an Irishman, lives in South Dakota, at Rapid City. He has been a member of the South Dakota legislature and helped to elect her Senators. He has held county offices, and is a respected citizen. I went to him on one occasion to take his deposition, and I said, "I suppose you have not become a citizen?" He handed me triumphantly, not a certified copy of the decree admitting him to citizenship, but a copy of the declaration of his intention to become a citizen of the United States. He had supposed all the time that that document established his citizenship; but he can not recover for his property taken by Indians, because of the interpretation of the act referred to.

John G. Campbell was a Delegate to the House of Representatives from the Territory of Arizona. He came to this country at an early age with his parents and was raised in New York. He testified that his father had been naturalized when he himself was but 14 years old. It was part of the family history. But in the abundant records of the State of New York I can find no record of his naturalization. The family removed to Arizona. Campbell was elected a Delegate to the House of Representatives of the United States; he died five years ago, and now his wife can not recover, because she can not establish the fact that the father of her husband was a naturalized citizen. Here is bill 4657, pending in behalf of his heirs. If I were a member of this committee, I would see to it that John G. Campbell's wife is paid for the depredations committed upon her husband's property.

The CHAIRMAN. How did it happen that Mr. Campbell did not make his claim before the law was changed?

Mr. ROBESON. I do not know why that was.

The CHAIRMAN. How many years was it after the depredation before the law was changed?

Mr. ROBESON. I should say that Mr. Campbell lost his property, according to my recollection, about 1881. I will ascertain.

The CHAIRMAN. So that for ten years he had opportunity to file his claim and did not.

Mr. HARRY PEYTON. From 1859 to 1891 the promise of "eventual indemnification" by the Government was not in force, and there was no promise on the part of the Government to pay for the depredations except from the tribal funds of the Indians.

Mr. ROBESON. The act passed in 1872 and the act passed in 1885 authorized the Secretary to make investigation of claims; but, in the first place, that there was an existing law of that kind was something not generally known, as is evidenced by the fact that out of

10,841 cases filed in court not more than half of them had been presented to the Secretary of the Interior.

The CHAIRMAN. I want to clear this up. I have not a clear understanding of what Mr. Peyton means. I understood you [addressing Mr. Robeson] to say that from back in the eighteenth century down to 1891 a man who was an inhabitant could at all times have recovered, and I understood Mr. Peyton to say that was not so.

Mr. ROBESON. He said there was no forum in which to present his claim. The guaranty was not continued down to 1891, but was repealed by the act of February 28, 1859. (Sec. 2156, Revised Statutes.) Yet an inhabitant, equally with a citizen, could have presented a claim against Indians alone.

The CHAIRMAN. From 1796 down to 1891 was there no forum before which he could have presented his claim?

Mr. ROBESON. He could have presented it to Congress or to the Department of the Interior against the Indians alone—not against the United States.

The CHAIRMAN. And he did neither?

Mr. ROBESON. No. The law provides that if the right of action accrued or the loss occurred prior to July 1, 1865, the Court of Claims should be without jurisdiction unless the claim had been filed before Congress or the Interior Department or before some agent or some subagent or superintendent or person or tribunal having power and authority to consider claims of that kind. But if the depredation occurred after July 1, 1865, then nothing is to be presumed against the claimant by reason of his failure to seek relief through Congress or the Department or the various officials of the Government charged with the examination of cases of this kind.

Now, it should be added here that if Mr. Campbell was as well informed as I presume a man who came here as Delegate from Arizona was he would have known that claims of that kind had been pending before Congress and the Department and before agents for many years without practical results.

The CHAIRMAN. In what year was Mr. Campbell a Delegate?

Mr. ROBESON. I can not find it.

Mr. STEPHENS. I think he was the first Delegate. Mr. Marcus Aurelius Smith, I think, told me that a few days ago.

Mr. MORSE. May I ask a question, whether there were any depredations subsequent to 1891?

Mr. ROBESON. Not at all. Those are expressly excluded from the consideration of the Court of Claims or anybody else. The Secretary of the Interior was directed by the act of 1891 to cease his examination of such claims.

Mr. STEPHENS. Are you acquainted with the case of Judge Lynch?

Mr. ROBESON. Yes, perfectly. You have reminded me to say to the committee that, through Mr. Stephens and Mr. Mondell and Senators Warren and Culberson and others, Congress has passed for clients whom I have represented six or seven bills removing the requirement of citizenship and permitting the Court of Claims to assume jurisdiction and award judgment; and in all the cases but one judgment has been awarded. In the case of Mr. Lynch, to which Mr. Stephens has referred, he testified that he was a citizen of the United States by

naturalization, but in swimming a stream he lost his saddle-bags in which were his papers, and he was unable to find the record anywhere of his admission to naturalization.

August Trabing, a citizen of Wyoming, served faithfully in the Army of the United States in an humble capacity, but he had never been naturalized, and Congress removed the requirement of citizenship for him, and permitted the Court of Claims to assume jurisdiction.

There is a bill now pending before Congress for the removal also of the requirement of citizenship of Fred Metzger, a United States soldier, in which case we give reasons why this requirement should be removed. I have never yet met with decided opposition to a bill of that character. When I came to the last Congress and asked for the relief of John G. Campbell—which unfortunately is not before this committee, because every bill filed here for the removal of the requirement of citizenship has been passed—

The CHAIRMAN. It appears that Mr. Campbell was a Delegate from Arizona in the Forty-sixth Congress. He must have been elected in 1878, so that this depredation occurred after Mr. Campbell was a Delegate.

Mr. ROBESON. I think it occurred in the difficulties of 1881.

Now, if I may, I would like the committee to look at the first page of this House bill 11316, and you will observe that in the twelfth and thirteenth lines this language occurs, "by Indians belonging to any tribe or nation subject to the jurisdiction of the United States." In the act as it at present stands, before the word "tribe" appears the word "band." This act I am advocating purposely omits the word "band."

The Sioux Indians number about 40,000 souls. They are a great people and we treat with them, and have done so for many years as a "nation." The Navajo Indians number about 17,000 souls. Being of smaller numbers, we have also treated with them, and designated them as a "tribe." In the States of Washington and Oregon there are perhaps thirty or forty different bodies of Indians maintaining a separate and independent existence, but, being few in number, we have always called them "bands." Now, in the average mind when Congress writes into a law a provision that there shall be recovered for depredations committed by a band, tribe, or nation, there is the natural presumption that it was the intention of Congress to provide for the recovery against Indians belonging to any aggregation, and that by the words "tribe, band, or nation" Congress was attempting to describe simply the body of Indians according to its dignity. That seemed to me to be a very fair argument, and it was made to the Court of Claims until it was discovered on the hearings here in 1904 that some person had—I do not like to say surreptitiously, but it is the only word that will express my idea—written into the law as recommended by the House and Senate conference committee the word "band." In proof of that I have the Record here of February 28, 1891, containing the conference report on the bill which afterwards became known as the act of March 3, 1891. That conference report is signed on the part of the House by Binger Hermann, B. W. Perkins, and Silas Hare, and on the part of the Senate by G. C. Moody, A. C. Pad-

dock, and Charles J. Faulkner. In that conference report, as will be seen from that Record, it is provided:

First. All claims for property of citizens of the United States taken or destroyed by Indians belonging to any tribe or nation in amity with the United States, without just cause and provocation on the part of the owner or agent in charge, and not returned or paid for.

Now, the use of the word "band" will not seem significant to you until I tell the members of the committee the result.

The CHAIRMAN. Right there, let me ask you whether you have investigated further than the mere face of the Record. Have you looked up in the files of the House the original of that conference report to ascertain whether or not this was a typographical error in the Record?

Mr. ROBESON. I have not had opportunity.

I am reading from page 12 of the former hearing, where you will notice Mr. Hermann and I engaged in a colloquy, and he said the word "band" was not in the act as agreed upon by the conference committee, as will be seen by a reference to the Congressional Record, part 4, volume 22, Fifty-first Congress, second session, at the top of page 3544, first column, where the bill is reported by the conference committee in the Senate, and in the same volume on page 3592, the middle of the first column, where the bill was reported by the conference committee to the House.

In neither of these does the word "band" appear. Until this act of 1891 was passed the words "band" and "nation" had not appeared in any act. Every act from 1796 down to March 3, 1891, provided for the recovery for depredations committed by Indians belonging to any "tribe."

Now, I want the committee to understand what this word "band" means, according to the courts. It means that a little handful of Indians, taken perhaps from different tribes, renegades, outcasts from their fellows, could get together under the lead of some man acting as head or chief, and commit depredations, and if they themselves committed any act which was hostile, one that denoted a lack of peaceful relations with the United States, it was a "band" within the meaning of this act, and although the tribe to which the individual members belonged was "in relations of actual peace" with the United States at the time, no recovery could be had.

See to what absurd results those decisions have led us. In a case against the Cheyenne Indians there was a band known as Black Kettle's band. At that time the Cheyenne tribe was in amity with the United States, Black Kettle had gone to Fort Lyon and had put himself under the protection of the American flag. Instead of keeping his people at the post, they sent him to Sand Creek, Colorado, some 20 or 30 miles away, and told him to keep his people there. John M. Chivington, a minister of Denver, there being considerable feeling against other Indians engaged in killing and taking property, organized a body of 100 day men, and they went by way of this post from which Black Kettle had been sent by the officer in command. Knowing that he had claimed the protection of the flag, they nevertheless marched down on his unprotected camp. When he saw them coming Black Kettle put up the Stars and Stripes at the top of his tepee; but in spite of that, the soldiers came and almost annihi-

lated the band. Some members of the band escaped and committed depredations. They had to live upon the country.

Now the Cheyenne tribe at that time was in amity with the United States, and Black Kettle's band belonged to it. But the courts held that Black Kettle's band was hostile, not in relations of actual peace, and though he belonged to a tribe that was in amity with the United States, no recovery could be had. When I came to prosecute cases of that character it occurred to me that if that decision was right, the converse of it was true, namely, that though the tribe itself was hostile, if the band by which the depredation was committed was in amity, there should be a recovery against the tribe. In the case of *Salois v. The United States*, reported in 33 Court of Claims at page 326, the facts were these: In 1876, as all of us know, Custer and his band were killed on the Little Big Horn, Wyoming. Practically all the bands of Sioux in the States of South Dakota and Wyoming were at war with the United States, but there remained at the various agencies parties of Indians who did not go to war and who were known as "Loafer Indians." They were free to commit depredations, and they did destroy a good deal of property. In this case I claimed that the court must consider the status of this band, and if it was in amity the duty of the court was to award judgment; and they awarded it, with the result following from it that, though this act of 1891 declares that the tribe must be in amity, I have secured judgments against a tribe not in amity with the United States for depredations committed by a little, insignificant band of that tribe which was in amity with the United States, thereby in part nullifying the law.

Now we want the word "band" out. At the close of the difficulties of 1876 Dull Knife's band of Cheyennes, which formed merely a family of Cheyennes, and two other bands were sent down to the Indian Territory from South Dakota. The Government desired to separate the Indians as widely as possible. Accordingly, they sent this band to the Indian Territory, where, under the unaccustomed conditions of climate and water and soil, the women and children of the band sickened and died like sheep. Dull Knife implored the authorities of the Government to let him go back to his people: but, with the usual unwisdom that characterized our treatment of half-savage Indians, they kept him there until his band became almost decimated. He endured it as long as he could, but one morning when the soldiers came out no sign was seen of Dull Knife's band. The soldiers were summoned and started on the trail, and they overtook Dull Knife's band somewhere in the State of Kansas. They held a parley. Dull Knife said, "I have no war with your people. My people can not live in the Indian Territory. My women and children are dying. Let us alone." The answer of the troops was to fire upon them, which fire, of course, was returned by the Indians; and then ensued, gentlemen of the committee, one of the greatest running fights ever made. It is part of the history of the States of Kansas and Nebraska. The Indians were finally surrounded and put in a stockade at Fort Robinson, in the dead cold of winter, with snow on the ground, for five days without fuel, fire, or food. Driven to desperation, they broke out from the stockade, and started again, straight as the crow flies, to their old home. The soldiers again sur-

rounded them and, with the exception, I believe, of three persons, killed all of them—men, women and children.

Now, when these Indians were attacked they had to throw away their impedimenta and subsist as well as they could on the country. They took perhaps \$15,000 worth of property from the citizens of Kansas and Nebraska; and those citizens are denied judgment because that band of Dull Knife's was not in amity with the United States. That case was taken to the Supreme Court and the Supreme Court affirmed the judgment of the court below, but concluded its decision with the suggestion that Congress ought to look after these citizens and inhabitants who had suffered in the progress of that flight of Dull Knife's.

There is a similar case in New Mexico. The Mescalero Apaches were in amity with the United States. Victorio, a chief, in 1879 gathered around him the turbulent spirits of those tribes, a few from this tribe and a few from that; and the court held that was a "band" within the meaning of the act, and there could be no recovery for depredations committed by its members. That case was tried in the Supreme Court at the same time with the other case of Dull Knife, and the Supreme Court affirmed the judgment of the Court of Claims.

If this word "band" was never in the acts prior to this time, the act violates the promises made to our people that if the Indians were the members of a tribe in amity with the United States we should be reimbursed, and it ought to be stricken out here in order that the promise made in 1796, and repeated so many times, shall be faithfully kept.

This bill in the first section would also remove the requirement of amity. I have already explained to the committee that the courts hold that the words "in amity" must be taken to mean "relations of actual peace," and I have said that it is very difficult in many cases to show that the Indians were in actual relations of peace. The Court of Claims has held that the existence of a treaty and continued recognition of the same by the Executive Departments is not conclusive of the amity of the Indians. All of us know how, when the Government is assailed in any jurisdiction, if it can find that there exists an executive construction of a certain act, it will offer as one of its most weighty arguments the fact of the long-continued departmental construction of that act in some way; and it is a very useful and a very persuasive argument to make in behalf of the Government. Now, the Court of Claims has said, no matter what the conditions are, it matters not if the executive department has recognized a treaty as continuing and synonymous of amity, and though there has been no break in the recognition of the treaty, it still is not conclusive of the fact that the Indians were in amity on a particular date with the United States. It has held that engagements with troops are unnecessary. It has held that hostilities with the settlers establish a state of war, and it has held that the cause of the hostilities is immaterial.

I believe that the last holding is right under the act of March 3, 1891; but I believe that we ought not to make the requirement that the Indians must have been in relations of actual peace; and I know from conferences with at least two members of the conference committee on the part of the House and on the part of the Senate that the House and Senate never intended to make any such requirement by the use of such words. In a memorandum, which I desire to file,

I have made references to the various decisions of the court on this subject of amity.

It is almost impossible for me to understand how there could have been a lack of amity between an Indian tribe and the United States. From the days of John Marshall down to this hour they have been declared to be "domestic dependent nations," "wards of the Government;" and no Supreme Court since the day of Marshall has found cause or occasion to change this definition of the status of Indians. I want to know how it can be that our Indian wards could ever be hostile to the United States; how they could ever be out of relations of actual peace; and I want to know if the Government did not owe it to its citizens and inhabitants to protect them against Indians, when the Indians did not occupy relations of actual peace toward the United States. This is a matter that has been discussed before this committee previously and before the Senate committee; and whenever there has been opposition to the removal of these words, and the opposing member of the committee is asked to state his reasons for his opposition, it is this: "It is the well-established policy of the Government not to answer for damages occasioned by the enemy in time of war." It is a very well-established principle, applicable to the relations between independent sovereigns; but we are dealing with "dependent, domestic nations," "wards of the Government," and when we come to deal with them directly, we never for a moment consider any theory which would be applicable as between independent nations.

For instance, our courts have declared time and time again that a statute may supersede a treaty with Indians, just as a treaty may supersede a statute.

Our Supreme Court has decided that though we promised Lone Wolf and his band of Kiowas and Comanches that they should possess their lands forever, the Government, without a treaty and without an offer to treat, had the right to take their lands and divide them and sell them to citizens of the United States.

We promised the Ogallalla Sioux and their chief, Red Cloud, that they should enjoy their vast territory, now in South Dakota and Wyoming, forever and ever; but, without an offer to treat with them, we started to open the Bozeman Road, with the result that Red Cloud and his Ogallalla Sioux went on the warpath, and for the first time in the history of the United States the Indians whipped us. That was in 1866, when the command of Fetterman and his troops were annihilated.

We do not treat with the Indians as independent sovereignties, but as our wards. We announced by an act of 1870 that we would make no more treaties with them. We assume to act for the benefit of the Indians, and in some instances I have no doubt we succeed; but when it comes to a claim of a citizen of the United States, or an inhabitant who has helped to develop the country, for reimbursement of losses occasioned by Indians, you would qualify his rights by the adoption of a theory applicable only as between independent sovereignties, that we will not pay for damages occasioned by the enemy in time of war, and made applicable to our relations with Indians only when some pioneer asks relief.

But let us see if that theory would be applicable if the Indians were independent sovereigns. According to the act of March 3,

1891, under which we are now proceeding, these judgments are chargeable to the Indian tribes. I may as well say to the committee that the Indian tribes do not pay these judgments; that the money is paid out of the Treasury of the United States. It is charged up to the Indian tribes, I suppose, as a matter of bookkeeping in the Treasury Department, but as a fact the United States pays them. The United States assumes the position of surety, or guarantor, and declares itself as secondarily liable. And the Indians, as the courts have decided, are primarily liable. Where, then, is there room for the application for the theory? We are making the enemy pay for damages occasioned by him during war, and as between so-called independent sovereignties we do that. We did not do it with Spain, but it is not because we could not have done so. It is the tribute the vanquished pays to the victor, to answer for damages in war; so that if we take the theory that the enemy itself is to pay the damages caused by war, we are violating no well-established principle or policy of the Government.

Now, let me dispose of certain propositions in this bill.

Mr. HACKNEY. If we should repeal that, under the provisions of this bill would that open up claims under the Black Hawk war and other old wars?

Mr. ROBESON. No. No new suits can be instituted after March 3, 1894, and there are no Black Hawk war claims; nor would it open up the Creek claims in Alabama, because the court, instead of dismissing those cases for want of amity, declared that we had granted amnesty to that tribe.

Mr. HACKNEY. Is there anything in the bill that would exclude those claims, or is there anything in existing law or the law as amended that would exclude them?

Mr. ROBESON. Yes. That is the trouble with the existing law. It not only includes—

Mr. HACKNEY. If you amend this law as you ask that it be done, would there be anything there to keep out these claims prior to 1865, prior to the civil war?

Mr. ROBESON. No. If they were pending in the Court of Claims they would not be cut out.

The CHAIRMAN. This bill, Mr. Hackney, as I understand Mr. Robeson, limits the jurisdiction to the claims already filed.

Mr. ROBESON. There are no claims that arose out of the Black Hawk war. There are a few that originated out of the Creek war, but they are excluded, as I have said, by reason of the amnesty granted to those tribes. The original act—

Mr. MORSE. Where are the limitations to the claims already filed in this act?

Mr. ROBESON. It is in the act of March 3, 1891.

Mr. HACKNEY. That section would not be affected by this bill?

Mr. ROBESON. It would not be affected by it at all. In further answer to Mr. Hackney I will state that section 13 of the act of March 3, 1891, provides—

That the investigations and examinations, under the provisions of the four acts of Congress heretofore in force, of Indian depredation claims, shall cease on the taking effect of this act.

Mr. HACKNEY. Section 4 of the bill H. R. 11316 is the limitation?

Mr. ROBESON. Yes; and by section 4 it is provided—

That any claim now pending in the Court of Claims for a loss which occurred prior to July 1, 1865, shall be within the jurisdiction of the Court of Claims, provided application was made by the claimant or any personal representative or any of his heirs, on account of such loss, to the Secretary of the Interior or the Congress of the United States, or before any superintendent, agent, sub-agent, commission, or commissioner authorized under any act of Congress to inquire into such claims; and that such claims shall be considered pending within the meaning of the act of March 3, 1891, and if the claim was made either in the form of a verified application or by affidavit of the claimant or any other person.

Mr. STEPHENS. You will find a clause pertaining to claims not filed within three years from the passage of the act.

Mr. ROBESON. Yes. Section 2 of the act of 1891 provides the time for the bringing of suits in the court should expire three years from the date of the passage of the act, namely, on March 3, 1894.

Mr. STEPHENS. Mr. Robeson, can we inquire how many cases will be affected by this?

Mr. ROBESON. I have reserved that for a moment, because I have got to go into some figures, and wish to dispose of some minor amendments first.

It is provided by section 3 of this act of March 3, 1891—

That all claims shall be presented to the court by petition setting forth in ordinary and concise language, without unnecessary repetition, the facts upon which such claims are based, the persons, classes of persons, tribe or tribes, or band of Indians by whom the alleged illegal acts were committed, as near as may be.

It is provided in section 4—

Mr. HITCHCOCK. I do not quite understand, Mr. Robeson, what the limitation is on the filing of these claims. Do you mean to say that the passage of this bill would enable the bringing of any suit that had not been brought heretofore.

Mr. ROBESON. I mean to say that it will not. The court is not reopened for that purpose.

Mr. HITCHCOCK. Suppose a man had not been a citizen. This would not enable him to bring suit, would it?

Mr. ROBESON. No; I do not think the courts ought to be reopened to the filing of new claims, but it would be a matter of intense gratification to me if it could be done. Yet, abundant time was given in which to file these claims, and independent of any partisan position I may occupy with respect to these claims, I believe no others should be filed.

Mr. HITCHCOCK. Suppose a man could not file a claim because he was not a citizen, or his progenitor was not a citizen?

Mr. ROBESON. That is his misfortune.

Mr. HITCHCOCK. This would not propose to remedy Mr. Garner's bill, then?

The CHAIRMAN. It would depend on whether the beneficiary under Mr. Garner's bill had already filed his claim.

Mr. ROBESON. No one knew at the time of the passage of this law to what time the courts might ultimately decide that citizenship related, whether they must be citizens at the time of the award of judgment, or citizens at the time of filing the petitions, or citizens at the date of the depredations.

Mr. HITCHCOCK. This bill refers only to those who filed claims and were unsuccessful?

Mr. ROBESON. Yes, sir.

Mr. HOWELL. When did the Supreme Court decide the questions growing out of this act of 1891?

Mr. ROBESON. There have been many decisions. I will come to that in a moment.

Mr. MORSE. Wherein is the equity of this thing? Here are a lot of people who had no right to file claims under the law who did file them, and then there was a lot more who knew the law, and you do not propose to do anything for those people. Am I right? Where is the equity of that?

Mr. ROBESON. I do not think there was anybody that knew to what time citizenship related.

Mr. MORSE. They may have guessed the right construction.

Mr. ROBESON. The Court of Claims has decided that a particular band was in relations of amity, and when the question is presented they have occasionally reversed themselves. Tell me how, under those conditions, you would know whether the Indians were hostile or in amity with the United States?

The CHAIRMAN. That does not involve the question of citizenship. That is what Mr. Morse is getting at. Under this bill you propose, because of the promise held out in the old act, to open the door to certain people and to close it to other people.

Mr. ROBESON. No. I simply propose to say to these people who have come in under this act and filed their claims within the time prescribed by the law, that they shall be permitted to prosecute their claims if the only objection be that they were not citizens of the United States. I say that those who were not citizens of the United States and did not bring suit do not occupy the same position. Many of these people came in, doubtless, not knowing that the court would make the citizenship relate back to the date of the depredations. They have proved their cases in many instances, but were denied judgment because they were not citizens. You can say, "Why not open the door and let people come in who might have withheld their claims from filing because they believed the Indians were not in amity with the United States?" They did not know anything about it, and nobody knew until the Court of Claims began to give its decisions; and when I tell you that the Court of Claims has more than once changed its opinion as to whether the Indians were in amity with the United States, you can see how difficult it is for the average man to determine what the decisions would be as to either citizenship or amity. I would like to see this reopened. If you say you want to regard the rights of all our people I would join most heartily with you in advocating the passage of such a bill. But I have never known a case where Congress gave three years' limitation, and afterwards extended the time. If I were on the committee I would not vote for it.

Mr. LINDBERGH. Could anybody file within those three years, irrespective of citizenship?

Mr. ROBESON. Yes. I think some four or five hundred people, who are not citizens, did file claims.

Mr. SLAYDEN. Mr. Robeson, is it not true that you have innumerable instances in mind, and know of them, where people filed their

claims during the three years under the impression that they were citizens, and who found out afterwards that they were not?

Mr. ROBESON. Yes. I mentioned a case a moment ago of a man who thought his declaration of intention was a proof of his citizenship. A man who served in the Army of the United States does not know, as a rule, that his service in the Army is a mere substitute for a declaration of intention. He thinks such service accomplishes his citizenship.

Mr. MORSE. Here are two men, for example, living side by side, each suffering from a depredation, one thinking he is a citizen, and the other believing he is not, and one files a claim and the other does not. Where is the equity in allowing the one to file and the other not?

Mr. ROBESON. The one showed diligence, and the other did not. There were, let us suppose, two men, both of whom knew they were not citizens. One of them may say, "I was not a citizen at the time of the date of the depredation, but I am a citizen now. The law says these are claims for loss of property by citizens of the United States. I am a citizen now, and I will file my claim." Now, I say that man has shown greater diligence than the other man who, knowing he was not a citizen at the time of the depredation, failed or omitted to file a claim.

The CHAIRMAN. Besides that, Mr. Robeson, there was a limitation of three years, so that if a man had simply declared his intention to become a citizen, he had time enough to take out his papers and file his claim before the expiration of the three years?

Mr. ROBESON. Yes.

Mr. HITCHCOCK. I can not see that that adds any merit or virtue to the man. It seems to me the question is whether it is safe to open the doors so wide as to admit a lot of new claims at this time. I can not see that the man who has suffered depredations deserves any better attention from the Government because he afterwards pleads his application for citizenship than the man who has suffered an equal depredation who has failed to avail of his declaration or application. But I can see why this committee should not open up the field to all these claims, some of which may not be good, even though others are good.

COMMITTEE ON INDIAN AFFAIRS,
HOUSE OF REPRESENTATIVES,
Wednesday, March 4, 1908.

The committee met at 10.30 a. m., Hon. James S. Sherman, chairman, presiding.

STATEMENT OF MR. WILLIAM H. ROBESON—Continued.

The CHAIRMAN. Mr. Robeson will resume his statement.

Mr. ROBESON. Mr. Chairman and gentlemen of the committee, with your consent, I wish to address you first upon section 2 of this bill, No. 11316. The committee will observe that section 2 provides that in any suit under the act of March 3, 1891, where the defendant tribe is not designated correctly, the petition may be amended so as to

designate correctly the tribe of Indians shown by the evidence to have committed the depredation.

Mr. HINSHAW. That is, provided notice be given?

Mr. ROBESON. No; I will tell you what the courts have decided. You will understand that the original act provided that the claimant should designate the tribe committing the depredation "as near as may be," and directed the Court of Claims to award judgment against the United States and the tribe of Indians when the tribe could be identified. By the use of the words "as near as may be" and the direction to the court to award judgment against the tribe when it could be identified, it seems that this could be done by amendment at any time before judgment was rendered.

The Court of Claims held, in an opinion delivered in the case of Duran, which I have referred to in my brief, that such amendment as to parties defendant could be made at any time, and the defendant acquiesced in that decision for seven years, during which time a number of such amendments were made. The effect of that decision was that if a man had a suit in which the depredations were said to have been committed by the Utes and it afterwards developed that they were committed by the Kiowas, the courts permitted an amendment bringing in the Kiowas and awarded judgment accordingly.

The act of March 3, 1891, provided that all suits should be brought within three years. The personnel of the court having changed, this opinion in the Duran case was criticised as having gone too far. Appeal was taken to the Supreme Court of the United States to determine the question whether or not the amendment naming the tribe really guilty could be made after the 3d of March, 1894, the theory being that the Indians committing the depredation had to be named as defendants originally; if not, to bring in another tribe as defendants after March 3, 1894, was, in effect, to bring a new suit.

The Supreme Court decided that amendment could not be permitted, for the reason just given. There was a strong dissenting opinion by Justices White and McKenna, who were unable to harmonize this decision with a unanimous decision in another cause wherein the Comanches were named as defendants, but the proof did not identify them as Comanches and did not identify them as members of any tribe. A decision was awarded against the United States alone. The case went to the Supreme Court, which affirmed the judgment of the Court of Claims. I ought to say, with all due respect to our highest judicial tribunal, that the court could not have rendered such a decision except upon the theory that the Indians were necessary parties to the suit.

Now, I say that the use of the words "as near as may be" gave to the Court of Claims the right to allow the claimant to name the guilty tribe at any time before judgment, for otherwise those words are without reason. If that be not true, there is no need for the words "as near as may be."

Let us see what an impossible task it is to set for claimants to have named accurately the tribe to which the thieves belonged.

Near the line between Nevada and Oregon once lived or roamed the Utes, Paiutes, Bannocks, Nez Percés, Snakes, Shoshones, Modocs, and other smaller tribes—all in one common country. All these tribes were given to depredations.

On a dark night the horses are uneasy in their stables, and the barking dogs run under the porch and whine, and you know from these indications that Indians are about. You find, in the morning, moccasin tracks at your barn; you miss your horses, and you follow a trail made by Indians riding single file and driving before them your horses, which, being shod, are easily followed by their tracks. The trail reaches the Indian country into which you are forbidden, by law, to go. You know they were taken by Indians, but by what Indians, God only knows. Do you think that Congress, when it enacted that law, had in mind that you should actually and correctly describe those Indians? If it was so intended why did it use the words "as near as may be?" Is it right and fair to hold out promises of recovery in these depredation cases and to add such an unreasonable a condition as this? It is impossible to identify the tribe to which most of these Indians belonged, because it was in the darkness of night that depredations were committed, or in the day when witnesses are not present. If you knew the different tribes, you could not tell them in the night. You could not distinguish the members of one tribe from another. I ask the members of this committee whether that is a fair and reasonable construction to be put upon that provision of the act. Yet, as the Supreme Court has so construed it, we ought now to provide against the hardships that decision occasions.

Mr. STEPHENS. Such things have occurred. There was a case in New Mexico where two Indians, one a Comanche and the other a Kiowa, committed some depredations, and it was impossible to tell to which tribe they belonged.

Mr. ROBESON. To illustrate that, I would mention a case which occurred in Mr. Slayden's district, in the valley of the San Saba River. In 1865 some 50 or 60 cattlemen went there and took their families; settling throughout the whole valley. On the 8th of August of that year 200 Indians came down the valley and drove out of the country cattle to the number of 15,000 to 25,000 in one day. As a result of that raid there were 53 claims filed. Of that number, 17 of the claimants alleged that the Indians were Apaches; 29 alleged that the Indians were Comanches; 2 of the claimants alleged that the Indians were Kickapoos. Some of the claimants said that the Indians were Apaches and Kiowas. I was satisfied that the depredations were committed by the Kiowas, Comanches, and Apaches, and it was so proved and decided, the court holding that the raid was committed by the confederated Comanches, Kiowas, and Apaches. Where the claimant had named Apaches, judgment was rendered against the Apaches; where they had named the Comanches, judgments were rendered against the Comanches; so with the Kiowas; but where the claimants named the Kickapoos the petitions were dismissed, because the proof did not inculcate any member of that tribe, and the two men who attributed their losses in that raid to the Kickapoos lost their claims, while the remaining claimants were given judgment against the other tribes, and their money has been paid according to the judgments. I submit to my friend, Mr. Morse, that furnishes an illustration of the hardship of that construction of the law, which is unparalleled.

In this case 51 claimants recovered and 2 did not, because they did not correctly name the tribe of Indians engaged in taking the cattle.

Mr. MORSE. Why should the Government reimburse those people any more than it should reimburse people who had suffered outrages at the hands of anarchists through dynamite outrages?

Mr. ROBESON. If this Government should pass a law providing for the protection of life and property in the town of Paterson, N. J., and should send me there to visit a nest of anarchists in that town under a legislative guaranty against personal injury or loss of property, and I should, in the discharge of my duty, suffer loss of property or injury, I would confidently expect Congress to reimburse me. It was under a repeated guaranty that the pioneers removed to the western country.

I want to say a word or two more, and then return to the question of citizenship and amity.

Section 3 of the bill provides that any petition heretofore filed under said act of March 3, 1891, by any party in interest, who was not the sole owner of the property, may be amended so as to bring in as parties plaintiff all the parties in interest.

There was a case from New Mexico where the owner of property having died, the eldest son, according to the old Spanish law of primogeniture, instituted suit in his own name. That was done at the instance of the other heirs. He was not permitted to amend, and the petition was dismissed.

Another instance was that of one partner, who brought suit in his own name on account of the loss of partnership property. There being no fraudulent purpose in the filing of the claim, the court allowed an amendment, naming all the partners as claimants. It has been decided that petitions might be amended so that the name of an administrator might be put in. There was a notable case, that of Mary Thomas, reported in 15 Court of Claims. Suit was brought by Mary Thomas as an individual. It appeared that the property belonged to her husband, who was dead at that time. She had not been the administratrix of the estate, but the court held that she had such an interest in the property as would entitle her to present the case so as to bring in later the parties in interest.

Recent decisions are to the effect that such amendment will be allowed. I do not want this question to go to the Supreme Court for an illiberal construction, but to confirm the Court of Claims in its latest decisions by this amendment.

Mr. STEPHENS. I am acquainted with a case in which the Comanche tribe of Indians murdered the father and mother of the Babb family. Afterwards the case was brought up for recovery, and H. C. Babb, who seemed to be the eldest son, filed a claim for the burning of property and the taking away of stock, and instead of joining his brothers and sisters, he failed to do that, and the courts afterwards held that he could only recover a small proportion of the amount of the loss.

Mr. ROBESON. That is a case where the eldest son of the family tried to recover by suit and recovered only his interest as an heir.

Mr. HINSHAW. Is it not usual in these suits for the damages to come out of the Indian fund?

Mr. ROBESON. No, sir. As a matter of bookkeeping, the judgments are charged up to the Indians, but it is not taken out of their funds. Payment is made out of the Treasury.

Mr. HINSHAW. In all cases where the Indians are held to be in amity with the United States it is held that they are not to pay the judgments?

Mr. ROBESON. Yes, sir; in all cases, except where judgment is rendered against the Utes and Osages. They have an abundance of funds.

Mr. HINSHAW. The theory of the law is that it comes out of their funds, but as a matter of fact the Secretary of the Interior decides that the Indian funds are not more than sufficient to subsist them?

Mr. ROBESON. Yes, with the exception of the funds of those two tribes.

Section 4 relates to the question of the cases pending in the Court of Claims and as to the jurisdiction of the court of certain cases. The act of March 3, 1891, says that "no claim shall be considered pending unless evidence has been filed therein." The Supreme Court, in defining the word "pending," decided that the effect of this provision was that no cases should be considered pending unless evidence had been filed, and that the evidence filed must be such evidence as was required by the rules and regulations of the Secretary of the Interior. I have cited that case in my brief.

The rules of the Secretary of the Interior required that application must be made by the claimant or his agent; that the declaration must state the tribe of Indians committing the depredation. It must describe the property destroyed, giving the quantity of each class of property and the quality and just value of each article or piece of property and the time it was taken or destroyed.

It has been my privilege to represent perhaps 500 cattlemen. Their cattle were scattered on the ranches in Texas, Oklahoma, and New Mexico, and they did not know the number of cattle owned by themselves. They would start a ranch with 500 or 600 cattle. There was a certain percentage of loss and a certain percentage of increase, and in that way they could make calculation so as to determine about the average of the herd, and they calculated that a herd would double itself in about four years. They would not sell any cattle. This was during the war or at the close of the war, and there had been no market for cattle for eight or ten years. In that case they would naturally expect that in four years they would have 1,000 cattle and in four more years they would have nearly 2,000. The Indians came down in great numbers in the nighttime and drove off their cattle. They drove the herders away from the cattle and cut off as many cattle as they thought they could drive away, and drove them straight to New Mexico, where they sold them to New Mexican traders. The cattlemen did not know how many cattle they had on the ranch at that time. The herders would estimate that they had 2,000 cattle.

After the Indians left the herders would go out and collect, say, 300 cattle. They would estimate, as they had 2,000 head of cattle, that they had lost 1,700 head, and the owner would bring suit for that number. I have never known a man who recovered that difference. They did their best to show the actual number of cattle lost. They introduced witnesses who had worked with cattle all their lives and with their own cattle, who could estimate remarkably close to the number of cattle actually in a large herd, or the number that

ought to be in a large herd under different conditions. They estimated the number driven away by the width and depth of the trail and the number of cattle they succeeded in recovering. These people, or herders, are naturally liberal to the claimants, and naturally the court's estimate is liberal to the Government. As a result, while the witnesses would estimate that 1,700 herd were taken, the owners recover the value of something like one-third of that estimated number.

It was utterly impossible for a claimant in such a case to tell exactly how many cattle he has lost or the value of them; and yet the rules of the Secretary of the Interior provided that the claimant must do that in his own affidavit. They required that he must file the deposition of two or more persons having personal cognizance of the facts. They must tell when, where, and by what Indians the depredations were committed, and the property must be set forth in every affidavit. If that rule be enforced, as it must be in all cases of this kind, then my boss herder—who left the cattle ranch this morning, after rounding up and ascertaining the number, and then went to the store and returns to-morrow morning to find the cattle gone—would not be a competent witness under the rules of the Secretary of the Interior, because he has no personal cognizance of the facts. He can not tell the tribe of Indians who committed the depredation, because he was not there; and he would not be allowed to give any facts to which the court would listen, although he left there that very morning and returned the next morning to find only 300 cattle out of the 2,000. He found, let us say, that there was a distinct trail leading to the Indian reservation. He took the herders and followed the marauders to the borders of Fort Still. That evidence would not be allowed by the Secretary of the Interior. The Court of Claims has rendered hundreds of judgments on evidence of that character, as any court would have done.

If the loss occurred subsequent to 1865, in the court trying the case such evidence is competent; but before the Secretary of the Interior, who, it is reasonable to suppose did not know any law, that evidence would not be accepted. A man suing under the act of March 3, 1891, on such a claim, accruing prior to July 1, 1865, would have no standing in the Court of Claims, because his suit would not have been considered as pending before the Secretary, but if the loss occurred on July 15, 1865, he could secure a judgment on such evidence. More than this, the Court of Claims has decided, in an opinion, that it regards affidavits filed before the Secretary of the Interior as possessing very little weight.

We ask you to say that a claim is "pending" if it has ever been filed before the Secretary of the Interior. Not many cases would come in under this amendment. Perhaps there would not be 100 cases.

Mr. MORSE. Would not that open up a good deal of fraud, or would it not give claimants a chance to make cases if the Government said they could put in that evidence?

Mr. ROBESON. I think not, for the reason that there is just as much difficulty in securing witnesses for the claimants as witnesses for the defense. If a claimant loses property it is hard for him to find somebody to testify. There is just as much difficulty to claimants

securing evidence in these old cases as there is to the defendants in securing unfavorable testimony.

Mr. HACKNEY. Does the bill affect ex parte affidavits filed with the Department?

Mr. ROBESON. No, sir. The original bill provided that affidavits filed with the Secretary might be considered as evidence in certain cases.

Mr. HACKNEY. The law would remain as it has been heretofore in force?

Mr. ROBESON. Yes, sir.

Mr. HINSHAW. Would not this section allow the most indefinite kind of claims or affidavits as to its claims to be considered as pending? There is nothing saying it must specify in any particular.

Mr. ROBESON. I think that section is criticisable for that reason. I think it should be amended so as to provide that the property and the kind and value of property taken and the time should be designated, and the Indians "as near as may be."

Section 5 is in reference to the competency of the affidavits, and I am reminded in that connection of the case of Nesbitt & Moore against the United States, in which the Supreme Court says that the claims must comply with the rules of the Secretary of the Interior. It was impossible to do that. That provision is unfair.

Mr. STEPHENS. I think it ought to be as strong as a petition in case of a suit for ejectment or a writ of injunction. This ought to be as strong as one of those petitions.

Mr. ROBESON. I think that affidavits ought to declare, as to depredations, that the tribes of Indians should be named as near as may be, and also they should describe the character and quantity of the property, its value, etc.

I have never found an application filed before the Secretary of the Interior that did not contain those material statements; but I will indicate a modification, such as Mr. Hinshaw and Mr. Stephens have suggested.

Section 5 provides for the reinstatement of such cases as are affected by the several decisions on citizenship, amity, the failure to designate accurately the Indian tribes, and the failure to comply with the rules and regulations of the Secretary of the Interior.

The Assistant Attorney-General in charge of these cases no doubt will state to the committee that hundreds of cases have been voluntarily dismissed, with the understanding and belief that if this readjustment was permitted the cases would be reinstated.

Mr. HINSHAW. How much would it involve, in number of cases or amount of money?

Mr. ROBESON. I have a table here, and the Assistant Attorney-General has one also, not more accurate, but fuller, than my information. I think the number of cases reinstated will be about 2,000, and the judgments made possible by these amendments under \$2,000,000.

Mr. Morse asked the other day whether it would be equitable to reinstate the case of a man who was not a citizen of the United States, but who had brought suit, and to deny an opportunity to other noncitizens now to sue. I want to make my answer a little

fuller now than I did then. I wish to say that when the act was passed, providing that the Court of Claims should have jurisdiction over all claims for property of citizens of the United States taken or destroyed by Indians, Congress might have meant that citizenship should exist at the time of the passage of the act. It might have meant that citizenship should exist at the time of the filing of the petition. It might have meant that it should exist before judgment was awarded, or that a claimant must have been an actual citizen at the time the property was taken. It might mean any one of those four times to which citizenship should relate. It took two decisions of the Supreme Court to settle that. I am reenforced in the position I took the other day when I stated that a claimant could not be expected to know the time to which the question of citizenship related.

For illustration, Mr. Morse and I live side by side. Each of us lost property at the hands of Indians.

Neither of us was a citizen of the United States when the property was taken, but both had become citizens when the act was passed. Our ideas are different as to the time to which citizenship relates. He thinks it relates to the date of the depredation. I think, and with much reason, from the words of the act, that it relates to the time of the enactment of the law. I bring a suit and Mr. Morse does not. I say that I have exercised greater diligence, though he showed better judgment in determining the time to which citizenship related. Steadfast in my belief that one a citizen at the time of the passage of the act would have the right to recover, I proceed with the taking of testimony and establish my case. I say that the fact that Mr. Morse can not come into court fifteen years after the jurisdictional act was passed does not alter the proposition that, as an inhabitant of the United States, I, who brought a suit, had been promised in many acts eventual indemnification for my losses, and that he can not complain because when Congress comes ultimately to redeem that promise it does not embrace him. I should say here that I have never known an instance where an inhabitant was deterred from bringing a suit by reason of the requirement of citizenship.

Mr. Morse's question also involves the determination of a proper policy to be pursued by Congress. Is it wise to reopen the dockets of the courts by providing further time in which new suits may be instituted? We have no hope or expectation that Congress will ever reopen the courts to the filing of such claims. Considered purely as a matter of policy, I do not think that they ought to be reopened for that purpose, for the reason that Congress was reasonably liberal in providing three years for the institution of such suits, and if we are to judge from hardships which may be occasioned by the passage of this amendatory law, let us consider those which are occasioned by the law as it now stands. A man who is a citizen and one who is not, live side by side. They contribute their services to the taming of the Indian, the development of the natural resources of the country, and to its settlement. They lose property on the same day and in the same depredation. At the time of the loss of the property each relies, and has a right to rely, upon the promise made to him in the various acts of Congress—a promise made to both the citizen and the inhabitant. We fulfill the promise as to the citizen and deny it as to

the inhabitant by the act of March 3, 1891. Is it fair? Is it honest to the inhabitant? Where is the justice in it? The law of 1891 does not fulfill, but violates its promise. When you consider that the Secretary of the Interior by an act as late as that of 1872, was directed to examine claims of inhabitants as well as those of citizens and to approve and allow them and to report them to Congress, and that such claims were paid to inhabitants, who were not citizens, do you think it was the intention of Congress to exclude inhabitants when it passed the act of 1891? If it had been the intention of Congress, was it a proper one? If it was not a proper one, why shall we not remedy the evil? This question of the standing of an inhabitant under the law seems so clear to me that I am without further argument in support of it.

Mr. STEPHENS. Is that the construction of the Supreme Court or of the lower court?

Mr. ROBESON. Of the Supreme Court. Two cases were heard there—those of Valk and Johnson, cited in the brief. The Supreme Court held, affirming the judgment of the Court of Claims, that citizenship as provided in the act related to the date of the depredation.

Finally, it is not an exaggeration to say that nine claimants out of ten believed themselves to be citizens, and so alleged—

1. Because of service in the Army.
2. Because they had declared their intention to become citizens.
3. Because of a supposed collective naturalization, accomplished by the annexation of the Republic of Texas, or the organic acts admitting Nebraska, for instance, and others of the newer States.
4. Because of the naturalization of their fathers, which in many instances can not be shown from the incompleting or mutilated records of courts.

When the Secretary of the Interior was examining claims and reporting them to Congress, he examined and allowed some claims of inhabitants as well as claims of citizens. Those claims were paid. There are two men at this moment residing in the State of Washington who lost property at the hands of the Indians. The property was lost on the same day in the same engagement, and they were both fighting the Indians. One was a citizen and the other was not. Both of them fought the Indians and were rendering service to the country. The Secretary allowed both claims. The attorney for one was diligent; his case went to judgment and was paid. The attorney for the other claimant was not so diligent, and while the case was pending, the court rendered its decision on citizenship, and the second one went out of court.

Mr. MORSE. Do you think that an unwarranted payment of one judgment ought to result in the payment of others?

Mr. ROBESON. I do not think that at all. You are opposing the removal of the requirement of citizenship because it will work a hardship to those alien inhabitants who did not bring suit, and for whom the courts will not be reopened. I say that it is a hardship to the men who did not file. It is a hardship to him not to open that act. But if you are looking for cases of hardship I could "harrow up your soul" with them, selecting cases from among those brought in the court, due to the unequal effect of the action of the Attorney-General or the court.

I desire to mention the case of Mr. Marsh, a banker in Omaha, a citizen of the United States, who suffered from an attack made by Indians on his wagon train. Penny and son were in the same train belonging to Mr. Marsh. They also suffered. They both brought suit. Penny and son stated in their claim, that at the time the Indians took the property, the Indians were hostile. Why should they not have said that the Indians were hostile? The Indians came upon them in war paint; they were armed with guns and bows and arrows; the natural impression was that they were hostile in an ordinary sense, because they forcibly took the property. The Court of Claims accepted that statement and dismissed the petition. In Mr. Marsh's case it was adjudged that the Indians were not hostile, having become peaceable only a few days before. By a special act Penny and son's case was reinstated and afterwards they got judgment; but the passage of that special act was a miracle.

There was a case in which the Court of Claims changed the date that marked the beginning and ending of hostility of a certain tribe, in a subsequent decision, thereby affecting a number of claims.

Mr. HACKNEY. That might have been done on particular facts in this case.

Mr. ROBESON. No. The courts do not determine the question of the time of hostility from the testimony of individuals. They go to the War Department reports and the reports of the Indian agents throughout the country and accept those as evidence of hostility or amity, according to the facts given officially.

The courts do not accept the opinions of laymen, except where it appears, for instance, that houses have been destroyed in a wholesale manner, or that many men, women, and children have been killed or injured, mail coaches attacked, or troops ordered out.

Mr. HACKNEY. The Penny case turned on the question of hostility, and that was lost.

Mr. ROBESON. That is true.

The CHAIRMAN. Is there not some data in the War Department by which that is regulated?

Mr. ROBESON. Yes; the official reports of the War and Interior Departments, and authentic histories. The Court of Claims held that the Kiowas and Comanches were not in amity from the 1st of June, 1874, to the 1st of June, 1875. On the 15th of May, 1874, fifteen days before they became hostile, about fifty or sixty Comanches left the reservation (the tribe being in amity), went into southern Texas, and committed a great many depredations.

On the night of the 31st of May, 1874, about 11 o'clock, this prowling band stole the horses of one of the citizens, who brought suit on account of his loss and recovered judgment therefor. Two hours afterwards—that is, early on the morning of June 1—they stole the horses of a neighboring ranchman, who lived some eight or ten miles away. Under the decision of the court that the Indians became hostile on the 1st day of June, 1874, the depredators were in amity at 11 o'clock on the night of the 31st of May and the ranchman whose horses they took at that time can recover, while his neighbor, who lost his property two hours later, can not recover because his loss occurred on the morning of the 1st of June.

Mr. HINSHAW. The same thing occurred on the Republican River in Nebraska.

Mr. ROBESON. That was in 1865. Tey entered into treaties in 1865—the Sioux and Cheyennes at the conclusion of the difficulties of 1864–65. The first one went into effect October 10 and others from that date to October 28, 1865. Mr. Marsh's property was taken on the 1st of November, 1865. Penny & Sons' property was taken at the same time.

The CHAIRMAN. We are at peace up to the very time of the declaration of war. There must be some action taken about it, fixing some time as the beginning and the end of such periods.

Mr. ROBESON. I would like to hold you to the first proposition, that we are at peace up to the time of a declaration of war. We never declared war against Indians in our lives.

The CHAIRMAN. Is not this rule of the Department one of policy?

Mr. ROBESON. Yes; but it is an unreasonable one.

The CHAIRMAN. But the statement of the Secretary that it began at a certain time settles the question; so that a man may be unfortunate if his depredation took place on one day and the status of amity was not restored until the next day. It is simply his misfortune and it is nobody's fault that he was shut out, is it?

Mr. ROBESON. No, and I am not saying so; but it is a misfortune that ought not to be permitted. I am saying how unjust it is that want of amity should be a bar to prosecuting a claim; and I am trying to show you upon what unsubstantial evidences the court must depend in determining the question whether the Indians were in relations of actual peace. Sometimes the beginning of a hostile period is indicated in the report of an officer that he, with a body of twenty-five or thirty troopers, encountered the Indians on the plains and had a fight with them. Sometimes a publication in a newspaper in a community wrought up by an occasional homicide or by continued depredations will serve as a basis for such a finding. Sometimes an army officer, desirous of exploiting his own gallantry, may have made an exaggerated report or attached too much importance to some incident of a collision with Indians.

Let me give you some instances: In the case of Montova, to which I have adverted, it was held that there was a war with Victorio's band, composed of members of different tribes. Sometimes the band numbered as many as a hundred Indians. If Victorio and his band had the capacity to be hostile, there is no doubt of their hostility. With reference to that band, the court declared specifically that each one of the tribes from which the members of that band were recruited was in a state of amity, but it dismissed the suits because of the hostility of this little band of renegades.

The CHAIRMAN. That is, the Supreme Court held that?

Mr. ROBESON. Yes, the Supreme Court affirmed the judgment of the Court of Claims.

The Court of Claims held that a state of war existed in Utah with Black Hawk's band in 1865. Is the Representative from Utah present.

Mr. HOWELL. Yes, I am here.

Mr. ROBESON. That band was recruited likewise from the different tribes of Utes; and it was held that that band was hostile. As a matter of fact, there were a few engagements between the citizens of that country and the Black Hawk Indians, but we did not send any troops there. We had no relations with these Indians at all. These

renegades gradually centered themselves around Black Hawk, making a band of 50 or 75, and some people were killed.

Mr. HOWELL. There were about 40 killed. He continued his depredations for three years—1865, 1866, and 1867.

Mr. ROBESON. Yes; and the court decided that for losses during that entire period there could be no recovery, because that little band of Indians under Black Hawk coming from tribes of Indians in amity with the United States at the time, was hostile, and the citizens of Utah can not recover.

The court has held in the case of *Connors v. United States* that a band of 49 adult male Cheyennes was a band within the meaning of the act. The Cheyenne tribe at that time numbered about 2,000. The court has held specifically that the Cheyenne tribe, to which they belonged, was in amity with the United States, that the other bands of the tribe which went down with that band of Dullknife to the Indian Territory and did not escape with him, were in amity with the United States, and that that little band of 49 men who made that run across Kansas and Nebraska was a band which was hostile, and the citizens can not recover for their depredations. The Secretary of the Interior had allowed \$12,000 or \$15,000 to various claimants on account of the losses suffered by them in the course of that flight. Some of those cases were submitted to the court. The Government at that time thought that a defense of amity should not be interposed, and the court awarded judgments. Some of those claims have been paid. Twelve or fifteen have not been paid, but have been repelled from the court on account of this decision.

It has been held in the case of the Mescalero Indians, who left their reservation without hostile demonstration, fled to the mountains, and lived by the chase, killed fewer men than they had slain when they were on the reservation, and took only such property as they needed for their subsistence, no troops having been sent after them; that for the six years they were absent from their reservation they were not in amity with the United States; and the man from whom they took 20 or 100 sheep, or the man who lost a horse (all the losses are small), can not recover. Now, the court made that finding, notwithstanding they had previously found that the Indians had a right to leave their reservation peaceably. But if, in escaping from their reservation, they are beset by troops and they fight the troops, they are then in hostility with the United States. Now, follow these Mescalero Indians.

Soon after their location upon this reservation the authorities of the Government placed upon the same reservation their ancient and hereditary foes, the Navajoes. The Mescaleros had been actually pursuing the arts of peace, and much progress was being made by them at the time the Navajoes were introduced on their reservation. Then the irrigation ditches the Mescaleros had constructed were destroyed by the Navajoes. The melons and fruits they had raised were plucked by their enemies. An unwary Mescalero, caught away from his companions by the more numerous Navajoes, was the victim of exceedingly rough treatment. Numerous petty interferences with them by the Navajoes became unendurable, so that, without molesting the agent or his family and without lifting a hand against a white man, the Mescaleros quietly left their reservation on the night of November 3, 1865, and sought the refuge of the mountains. That act

of departure from the reservation has been taken by the court to mark the beginning of a long period of hostility, notwithstanding a previous decision that the peaceable departure of Indians from a reservation, though without the consent of the authorities, was not a hostile act. That gives you an idea of the difficulties in demonstrating to the court that the Indians were in amity.

When Loco's band of Chiricahuas fled from the reservation toward Mexico, they were overtaken by the troops who drove them over into Mexico. The court held that they were in hostility for the eight days of their flight, and the people who lost property taken by them for their subsistence as they fled, can not recover for it because of that hostility. This is denominated by the court as "a war of eight days."

Finally, the court has decided that a war with the Utes began at sunrise of one day and ended with sunset of the next—a war of two days with an Indian tribe!

The CHAIRMAN. The time of adjournment has arrived, but before the committee rises I want to say just this much. The suggestion was made the other day that there was some chicanery—and it seems that the suggestion was well founded—in the enrollment of the bill, of the act of 1891, in the insertion of the word "bands" in the law. I have gotten those original papers, and I have them here and would be glad for any member of the committee to look at them. It would appear from the original papers that the Senate engrossed bill was engrossed on February 19 of that year, 1891, and had in it the word "bands;" that a week or ten days later that bill was made the basis of the conference report, and the typewritten conference report omits the word "bands."

Apparently that was the mistake of the typewriter in making that copy, and apparently after that conference was agreed to the enrolling or engrossing room used the original engrossed bill which was supposed to have been used and which undoubtedly was used by the typewriter in making that copy, and included the word "bands." So that seemingly, instead of it being chicanery in inserting that word "bands," it was the oversight of the typewriter in leaving it out in drawing up the conference report.

Mr. STEPHENS. This bill is designed to correct that, is it not?

The CHAIRMAN. Yes.

(At 12 o'clock m. the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reassembled at 2 o'clock p. m.

Messrs. W. H. Robeson and Harry Peyton, and Hon. J. G. Thompson, of the Department of Justice, were present.

STATEMENT OF W. H. ROBESON—(Continued).

The CHAIRMAN. Mr. Robeson, you may proceed.

Mr. ROBESON. I have omitted to call the attention of the committee to one case which illustrates the variation in the opinions of the Court of Claims on the subject of amity and particularly its consideration of the word "band" in the act of March 3, 1891.

In November, 1890, the Sioux Indians, on several reservations in North and South Dakota, were the victims of a religious frenzy which we know now as "ghost dancing." The Standing Rock Agency was distant from the Pine Ridge Agency about 300 miles. At Standing Rock Agency Sitting Bull and his band of Uncopapas were located, Sitting Bull living a short distance from the agency building. It was determined to arrest Sitting Bull because he was supposed to be the chief spirit which brought about the disorder and the turbulence that were marking the actions of the Indians at that time, and on the 15th day of December of that year the Indian police were sent to arrest Sitting Bull. In their endeavor to arrest him they killed him and two or three other Indians.

That incident occurred, as I have said, 300 miles distant from the Pine Ridge Reservation, where the Ogalalas were located, and it occurred on this reservation, which was the reservation of the Uncopapas. The Ogalalas and the Uncopapas actually spoke a different language. They were maintained at different agencies and were parties to different treaties. On the 15th day of December, 1890, on the Pine Ridge Reservation there was absolute quiet. There had been no disturbance of any kind except that which naturally arose out of the efforts of the agent to prevent the Indians from engaging in this ghost dancing. Yet the Court of Claims has held that because of the killing of Sitting Bull, who did not belong to the Ogalala tribe, at a point 300 miles away, while he was resisting arrest, the Ogalalas became hostile, and they fixed that as the date of the beginning of the period of hostilities, on the part of the Ogalalas.

Mr. STEPHENS. Was Sitting Bull a member of the Ogalala tribe?

Mr. ROBESON. No; he had no connection with them; he was as different from the Ogalalas—except that they were all Sioux—as a Kiowa is from a Comanche. They even spoke a different language. But the court has held that the Ogalalas became hostile on that day when Sitting Bull was killed. When they held that they utterly disregarded their holding in the Conner's and Montoya cases, to which I have referred, relating to the hostility of a "band." While Sitting Bull's band may have become hostile by reason of the killing of Sitting Bull, this tribe of Ogalalas, 300 miles away, who knew nothing about and cared nothing about Sitting Bull, were in amity with the United States.

Now, the court holds that the hostility occasioned by the arrest and killing of Sitting Bull marks all the Sioux Indians of South Dakota as having become hostile on that day; and yet I do assure this committee that it was not until the 29th day of December of that year, fourteen days after Sitting Bull was killed, that any overt act of unfriendliness occurred between the Oglala Indians on the Pine Ridge Reservation and any citizens or troops of the United States. That period of a want of amity, according to the court, lasted thirty days, terminating on the 15th day of January, 1891.

When you leave the railroad at Chadron, Nebr., to go up to Deadwood you pass through Hot Springs, S. Dak., where there is a magnificent hotel building and a summer resort, and through the towns of Rapid City, White Wood, and Sturgis. The Rapid River runs through a beautiful, fertile valley. At that time there were numerous settlers who had large herds of fine cattle in that valley, not numbered by the thousands, as we have them in Texas, but one man would be

the owner of 300 or 400 head of cattle of fine quality, cattle which were being fattened for the Chicago market.

These Pine Ridge Indians, the Oglalas, from November 31 until about Christmas time, having gone in a considerable body off the reservation and on to the land where these white men pastured their cattle, took a great many of those cattle. The court has denied them judgment on the ground that the Indians were hostile on the 15th day of December, yet very shortly after the expiration of the alleged hostile period Congress voted \$100,000 to be paid to the Indians and the squaw men on the Pine Ridge Reservation for their horses and cattle which were taken from them by the alleged hostile Indians; and yet those white men, who had located their cattle rightfully beyond the borders of the reservation, are denied judgment in the Court of Claims against Indians who had wrongfully left their reservation and had gone into the territory which white men only had the right to occupy. Now, I submit to the committee that that presents a very unusual case, and that the decisions of the Court of Claims have resulted in great injustice to those citizens.

Mr. STEPHENS. What was the style of that case and where would it be found?

Mr. ROBESON. The style of the case in the Court of Claims?

Mr. STEPHENS. Yes.

Mr. ROBESON. The original opinion was in the case of McCormick v. United States.

The chairman [Mr. Sherman] has explained to the committee that while I was entirely justified in saying that the word "band" did not appear in the bill as reported by the conference committee, that the mistake was with the report of the conference committee, and that there had been no insertion of the word "band" in the bill. It had appeared in the engrossed bill as it was originally considered by the conference committee. Very briefly I have urged upon the committee as strongly as I know how that the word "band" ought not to be in the act. To put my idea in concise language, the word "band" never appeared in any Indian depredations act providing indemnification until this act of March 3, 1891, was passed.

Now, I submit to my friend from Wisconsin that if he had been a Member of Congress and had considered this bill at the time it was up for passage, and the word "band" appeared in conjunction with the words "tribe or nation," there was but one sensible interpretation to put upon his action in voting for the passage of such a bill, and that was that it was his intention to legislate so that any body of Indians, no matter whether we call them a "tribe" or "nation" or "band," should be responsible and answerable for depredations, provided the band, tribe, or nation was in amity with the United States; and I also call to his attention—because he has given intelligent consideration and close attention to this bill—the fact that the decisions of the court, instead of carrying into effect that intention, have defeated it, in the declaration that it is their duty to consider the status of a band of a tribe, and that when the court so decided they simply nullified the intention of Congress; and further, if any Member of Congress who voted for the passage of that bill intended that, if a depredation was committed by a body of men comprising a band, the band being itself hostile yet belonging to a tribe in amity with the United States, the hostility of the band should prevail, what limita-

tions would the committee put upon the band? What should it number? If it numbered 500 and the tribe numbered 2,000, let us say, it was a band of a tribe. If it numbered 50, would you call it a band? The Court of Claims has. If it numbered 20, would you call it a band? The Court of Claims has. Then where is your limit? If it numbered 5, would you not also call it a band? At that the Court of Claims balked. They held that Victorio's band, which numbered from 30 to 100 men, was a band within the meaning of the act; but when Victorio was killed, in August, 1880, he left behind him his chief lieutenant, Nana, with a remnant of Victorio's band numbering from 7 to 30 persons who continued the bloody work that Victorio had done, and the Court of Claims has refused to hold that that was a band within the meaning of the act. I think they were right, but the courts were wrong in the other instance. If they were right in the other instance, I can furnish no reason why they should not have continued to call any handful of men from any tribe a band within the meaning of the act.

Mr. MORSE. Did the court legally define the word "band?"

Mr. ROBESON. Yes, sir; in the case of *Connors v. The United States*, referred to in the brief, Judge Weldon said that they would consider a body to be a band which cohered for any considerable length of time, and which recognized one of their number as being their chief or leader, and which had, for that purpose, severed the relations between itself and the main tribe.

Now, this band of Victorio, after Victorio would return from Mexico, as he did on several occasions when the troops had driven him there, simply became absorbed again into the tribe. The Mescaleros of his band went to their agency and drew their rations, and so also with the Chiricahuas, but when Victorio was ready to go again he was always able to find some turbulent spirits ready to go with him and continue the depredations.

Now, if this committee will strike out the words "in amity" it need not bother about the word "band." If the provision requiring amity be eliminated, then it does not do any harm for the word "band" to stay in. If the committee should retain the provision that the Indians must be in amity with the United States, I submit to you gentlemen, very earnestly and very respectfully, that the word "band" ought to be stricken out, because the interpretation put upon it and the construction of it by the Court of Claims simply annuls what evidently must have been the purpose of Congress, namely, that there should be a recovery against any aggregation of Indians.

Mr. MORSE. Is it not a fact that this whole legislation is based upon the theory of a gratuity and gift without any consideration—a gift from the Government to this people without consideration?

Mr. ROBESON. On that we have two diametrically opposite opinions. Chief Justice Nott, perhaps the ablest jurist who ever passed on these Indian questions, declared that any sum received on account of an Indian depredation was a gratuity; that it was not subject to any debts, and that the moneys must be paid directly to the claimant or to his heirs or legal representatives. About a year after that Judge Howry delivered an opinion in the *McKenzie* case in which he held that it was not a gratuity, but that while it is true that there was no obligation such as could be enforced in a court of law the Court of Claims, by the act of March 3, 1891, was to recognize it as a moral ob-

ligation upon the part of the United States, and that any moneys received by a claimant or awarded to a claimant was like any other property he had, subject to levy of execution for the satisfaction of any debts due from the claimant to anybody.

Mr. HOWELL. Under the first construction, then, the passage of this law would be merely to enlarge and extend these gratuities or gifts by the Government?

Mr. ROBESON. Yes; if that first decision is right. I will say to you very frankly, for what it is worth, that I think the first decision is right. I think this is unquestionably a gratuity, because it is nothing more nor less than the recognition of a moral obligation. There was never a legal obligation upon the United States to pay for losses occasioned by Indians.

Mr. STEPHENS. Which decision would be the law now; which do they adhere to?

Mr. ROBESON. The last one, that it is not a gratuity, and on the strength of that I have appeared for creditors of certain claimants who have recovered judgments against the United States, and secured the payment of obligations.

Mr. PEYTON. I would like to make this suggestion to you on that point, that while the payment of the judgment might be a gratuity, yet the citizen was under obligation to the Government not to seek private satisfaction or revenge for Indian depredations upon his property; that he was entitled under the law to that promise of eventual indemnification. In other words, if he would not pursue the Indians and seek private satisfaction or revenge, the Government would see that his claim was paid. Am I right?

Mr. ROBESON. Yes sir.

The CHAIRMAN. But you are asking here that we extend this gratuity beyond the citizen?

Mr. PEYTON. If I said citizen, I meant to say citizen or inhabitant, because they have always been equal under the law.

Mr. ROBESON. There will be no doubt in the minds of the committee that the promise, every time it was made, was made to the inhabitant as well as to the citizen until this act was passed.

The CHAIRMAN. When was the promise, as you call it, first made, and what was the promise?

Mr. ROBESON. May 17, 1796, thus: "You go to that country and settle, and till the soil, or do anything you have to do, and if any Indian belonging to any tribe in the United States takes your property make your claim to the proper authority; do not attempt to seek private satisfaction or revenge, give no just cause or provocation to the Indians to take your property, and in the meantime the United States will guarantee you eventual indemnification for all you lose at the hands of Indians."

Mr. HOWELL. Where will you find that?

Mr. ROBESON. In the act of May 17, 1796. It was brought into the general law of June 30, 1834—the trade and intercourse act. By the act of May 20, 1859, the United States receded from that promise of payment out of the funds of the Treasury. By the same act it declared that the liability of the Indians was not thereby destroyed.

Mr. MORSE. In 1879?

Mr. ROBESON. 1859. That is section 2156 of the Revised Statutes. By the act of 1872 it authorized the Secretary of the Interior to receive such claims and to investigate and examine them, and if approved, to allow them, and make report of his action to Congress. By the act of March 3, 1885, there was an enlargement of the power of the Secretary, authorizing him to maintain an independent investigation, and under the authority of that act special agents were appointed and sent out all over the country, and they took testimony and made their reports to the Indian Office, and the Secretary made his allowances, some of which were paid and charged to the tribal funds of the Indians. These allowances were made irrespective of conditions of amity, the only prerequisite being that the Indians were in treaty relations.

Mr. HOWELL. Have those reports ever been published, the reports made to the Secretary of the Interior?

Mr. ROBESON. No, sir; not printed—you mean printed?

Mr. HOWELL. I mean printed.

Mr. ROBESON. I understood you to ask if the reports of the special agent had ever been published. The allowances have been published. It is in Executive Document No. 125 of the Fifty-fourth Congress.

Mr. STEPHENS. The object in referring them to Congress, as I understand, was for payment?

Mr. ROBESON. Yes, sir.

Mr. STEPHENS. It would be of the same nature as a judgment of the Court of Claims would be now?

Mr. ROBESON. It did not have the same force and validity as a judgment. As a matter of fact, Congress paid a number of those allowed claims.

Mr. STEPHENS. Would it not be somewhat on all fours with the judgment of the Court of Claims where they investigate and report to Congress the amount due any individual?

Mr. ROBESON. I would be willing to say that it would have the same standing as a finding of fact made by the Court of Claims, but of course if I come here with a judgment of the Court of Claims I do not have to go before a committee and ask that it be paid. Judgments are paid as a matter of course.

Mr. STEPHENS. Then did not the Secretary of the Interior, by special agents, investigate each one of these claims and report the amount found due?

Mr. ROBESON. He did.

Mr. STEPHENS. What would be the difference between the finding of the Secretary of the Interior and the finding of the court?

Mr. ROBESON. The court has the power to render judgment; the Secretary of the Interior only had power to make report of his findings to Congress. In the act of 1891 Congress directed that when any of those allowed cases was reported by the Court of Claims, unless either the Government or the claimant elected to reopen the case, the court should have the perfunctory duty of awarding the amount allowed by the Secretary of the Interior. In other words, if there is no objection to this allowance on the part of either one of the parties, the Court of Claims need not inquire further; claimants need not introduce any other evidence. All that is necessary is for the court to render the judgment, and that was the regard in which the court held the allowance of the Secretary of the Interior.

Now, I will say to Mr. Morse (and I mention him particularly because he has seemed to be opposed to this citizenship and the band amendments) that in looking for some justification for the insertion of the words "in amity with the United States," when I approach a Member of Congress and ask him to justify the insertion of these words—and I have approached several who have been unfriendly to this proposed legislation—the invariable answer has been that the United States has never at any time agreed to pay for damages occasioned by the enemy in time of war. Let us say, gentlemen, that that is a very well-established policy of our Government, and I presume of all civilized governments. Now, when you come to apply that principle as between our Government and some other independent sovereignty we find that it is a universal policy. We find that all governments have that same policy. I want you to tell me by what process you are able to make that theory or policy applicable to our relations with Indian tribes. I want to impress upon you, and upon any members of this committee who are unfavorable at the time to this legislation—I want to impress upon you that there is as much reason in saying that hostility could exist between the Indians and the United States as to say that it could exist between father and son, or guardian and ward.

You must remember that the Indians in the United States are your dependents; that they are not sovereigns. You make a treaty with England or Spain. Suppose you break it. There is war in many instances, unless there is some provision for breaking it or some limitation of time. You make a treaty with the Indians and you promise them that they shall live forever on a reservation, and that the foot of a white man shall not be set there; and the next Congress will throw that open to public settlement in violation of that treaty. How can you do that? The Supreme Court says you can do it; and you did it when you took the lands of the Comanches and Kiowas and threw them open to public settlement. Upon what theory can you do that? You violate your agreement with the Indians; you directly annul the treaty that you had made with them—a treaty which was as solemn a document to them as a treaty between our country and England is to us. You do it because you have the power to do it; you did it because they were your domestic dependents; you did it because they were your wards; you did it because you were more intelligent and more enlightened than the Indians, and the Supreme Court of the United States says you had the right to do it.

MR. MORSE. Then you would put them on the ground of the immigrant who comes here, who is not yet a citizen and who destroys the property of an American citizen. Would you put them on a par with that man?

MR. ROBESON. Not by any means. He is an alien; the Indian is not, and has been particularly declared by the Supreme Court of the United States, in twenty instances, not to be an alien.

Now, I say that that principle which is applicable between independent governments is not applicable between the United States and the Indians; and I will say that you never have applied any other international principles to your affairs with the Indians except in this single case of Indian depredation, where the people to whom you made a promise have come and claimed its fulfillment.

Mr. STEPHENS. And you would call the Indian a domestic national ward?

Mr. ROBESON. Yes, sir; he is not an alien; he is a domestic, a dependent, and he is a ward, and all of them were such until you made citizens of the United States out of those who withdrew from the tribal relations. The first declaration we had on this subject was that of Chief Justice Marshall, and I think we are all familiar with that. That appears in 5 Peters, and was reaffirmed in 6 Peters, and down to 150 United States Reports, in the case of *Jones v. Meehan*, where the same declaration was made by the Supreme Court.

Now, the committee has more than once suggested that it would like to know something about the figures, and I want to give them. Before I give you my estimate of what liability would be assumed by the United States, if this act should pass, I would give you a short statement to show how the judgments of the Court of Claims have decreased in dollars and have decreased in percentages since the court first began to render judgments in 1891 and 1892; and I will give to the stenographer a table, which may be inserted in the record, showing the average amount claimed and the average amount of judgments and the average per cent in the various years since the act was passed. I am not going to read all of this table to you, but only a portion of it.

In 1892 the average amount claimed was \$3,700, I mean in the cases which went to judgment; the average amount allowed was \$1,900, making a percentage of 53. From that time for two years the average of all amounts claimed and the average of the amounts of judgment are slightly greater, the percentage, however, going down from 53 to 43. The highest percentage reached was in the years 1895-96, when the best of the cases was disposed of. From that time the percentage of judgments has ranged from 37 to 29.8. While, therefore, the average judgments in 1893 and 1894 was about \$2,400, the average judgment in 1905 was but \$1,270. In 1906 it was \$1,045, and in the year just passed, 1907, \$1,100.

Mr. THOMPSON. Are you comparing those to the amount claimed in the particular case?

Mr. ROBESON. Yes, sir.

Mr. THOMPSON. The evidence last year was different.

Mr. ROBESON. I know; the average amount of these judgments last year and the judgments unpaid now you refer to.

Mr. THOMPSON. Yes.

Mr. ROBESON. The judgments unpaid, the average claimed in the fifty cases, was \$3,680, and the average judgment was \$1,000 and the percentage 30.

That enables me to say to you gentlemen that it possesses this significance. The act was passed in 1892, fifteen years ago. In those fifteen years, if I should guess, I should say that 1,500 witnesses have died. There is nothing the matter with the cases which have been considered in the later years—I mean nothing which goes to their honesty, and nothing which goes to the integrity of the claims—but it was the inability of the claimant to procure his witnesses that has caused this remarkable decrease in the amount of the judgments and in the percentages compared to the amounts claimed. And I also want to say to the committee that among 10,841 cases filed there is not one in which the Court of Claims has ever sustained a plea of

fraud. There have been perhaps ten or fifteen cases in which the Government has filed the statutory plea of fraud, which if established would have resulted in the dismissal of the entire claim, no matter whether the fraud attached to every item of the claim or not; and I believe that it would be impossible to establish a jurisdiction in which so many claims might be filed and have less of real, actual fraud in them than there is in these Indian depredation cases.

Before we come to the figures I want to say just one word with reference to the Court of Claims. I have explained to the committee that the Court of Claims has occasionally reversed itself in its decisions upon amity; that it has given opinions that are not uniform on some subjects, and that is not intended so much as a criticism of the court as it is a criticism of the law. The court has had to proceed in the determination of these cases of amity without guide or precedent. It has had to decide what evidence would justify it in passing upon the questions of amity or hostility, but there is no question that when the Court of Claims comes to consider an Indian depredation case, or any other sort of a case against the United States, it is invariably a matter for consideration that the United States is the defendant; and when it comes to the determination of cases of any kind, and there is a doubt to be resolved, that doubt is resolved in favor of the United States; and the committee may be assured that when a man comes out of the Court of Claims with an Indian depredations judgment he has run the gantlet of the Attorney-General's office, which has been skillful and diligent and able and persistent in the presentation of any sort of defenses that really existed, or that they thought might exist, and that of those of us who have succeeded in securing judgments from the Court of Claims in these cases, it may be said of them, "These are they that have come up through great tribulations."

Before leaving this subject finally with you I want to call the attention of the committee to something which it would be very proper seems to me may be very properly stated here. The Supreme Court to state to a court, and which, as there are lawyers on the committee, it of the United States has said that in the case of a doubtful and ambiguous law the contemporaneous construction of those who have been called upon to carry it into effect is entitled to great respect; and there is a long line of decisions in which that principle is declared. Again, it is said that the construction given to a statute by those charged with the duty of executing it ought not to be overruled without cogent reasons. Again, the Supreme Court says: "It is our duty not to overrule the construction of a statute upon which the Land Department has uniformly proceeded in its administration of the public lands except for cogent reasons." In the case of *Peter v. Howe*, the Supreme Court upheld the well-established rule of the Interior Department, saying, that as it was considered that "the rule thus applied in the practical administration of the statute by the official by law charged with its execution conforms with its intention, we are unwilling to overthrow it by reason of a mal and technical construction." When the Secretary of the Interior, by the acts of May, 1872, and March 3, 1885, was authorized and directed to examine these claims and pass upon them and report his action to Congress, invariably the Secretary of the Interior found that these Indians were parties to a treaty which obligated them to keep peace with the

United States and to pay for depredations, and the construction of the Department was that, the Indians being in treaty relations with the United States, they were in amity with the United States.

Now, that condition of affairs continued from 1872 until the time when the Court of Claims acquired jurisdiction, and held, despite the departmental construction, that the existence of treaty relations between the Indians and the United States was not conclusive evidence of amity. There is but one case to my knowledge—and I believe I have seen every one of them—in which the Secretary of the Interior ever passed upon a question of amity independent of treaty relations. I believe the Secretary did not do that, but the superintendent of Indian affairs for New Mexico, Mr. Merriwether, at that time the Territorial governor, found in a certain case that the Indians were not in amity with the United States. Long years after that man was dead I presented that case to the Court of Claims for his heirs, and the Court of Claims held that the Indians were in amity with the United States. So that in the solitary case in which the Department, through its agents, ever considered the question of amity and found it against the claimant the Court of Claims took a different view, finding that the Indians were in amity and awarded a judgment.

Mr. PEXTON. That is, that the Indians were in amity?

Mr. ROBESON. The court found that the Indians were in amity and awarded a judgment. So the Court of Claims, in making this finding that treaty relations were not sufficient, disregarded, despite all those decisions on the subject, the long-continued departmental construction (exactly contrary to that adopted), which was the only construction given the word "amity" when the act of March 3, 1891, was passed.

Mr. HACKNEY. May I ask the question—and probably you have answered it many times, but I would like you to repeat it—what depredations have been committed that would be covered by this act that you would regard as of such character as to be justly chargeable at a time when the Indians were not in amity; in other words, would any of these claims come under any of the well-recognized wars of the past?

Mr. ROBESON. Yes, sir.

Mr. HACKNEY. What wars?

Mr. ROBESON. There unquestionably was a war—

Mr. HACKNEY. I mean now what claims would we have to deal with that would be opened up which arose out of a well-recognized Indian war?

Mr. ROBESON. There was unquestionably a war in 1866. I gave you the statement of it when I said that we had violated our promise to Red Cloud's Ogalalas by attempting to open what is known as the "Bozeman road" through the lands of the Ogalalas.

Mr. HACKNEY. Yes; we brought that on by our act.

Mr. ROBESON. We brought that on by our act, and I state to you that our troops were whipped by the Indians; it is the only instance in which the Indians ever got the better of us, and we knew our cause was unjust and receded from the position at the instance of Gen. William T. Sherman; and the Bozeman road was not opened until suitable treaties were made there.

Mr. HACKNEY. Is that the only war that they had that you recognize as being a war?

Mr. ROBESON. No, sir; I will have to tell you that the first appearance ever made by Phil. Sheridan was against the Yakima Indians of Washington—that was the first time he ever appeared on the field. There was a war which occupied part of the years of 1864–65 with the Sioux and Cheyenne Indians.

Mr. STEPHENS. And Black Kettle's band, too, in Oklahoma—was that not a war?

Mr. ROBESON. No, sir; it was an outrageous murder by the United States. There was a war with the Navajo Indians when Carlton was commander of the United States troops, in 1863–64. There were at that time numerous engagements between the Navajoes and the troops of the United States. There was a war with a part of the Nez Perce tribes under the lead of Chief Joseph. We brought it on. Chief Joseph refused to sign away, as he expressed it, "the graves of his fathers," and we drove him away. There was the Modoc war. There was a short period of hostilities with the Modocs when they treacherously slew General Canby in the lava beds in Idaho, but we hanged the prisoners we took.

Mr. STEPHENS. And Custer's defeat by the Sioux?

Mr. ROBESON. That was a war, and it was one in which the United States ought to have been most severely punished. When a man speaks of the massacre of Custer's command, as much as any of us may regret it, I always feel like speaking out and saying that there was no massacre about it. He was killed in fair battle. We had given the Indians the Black Hills, and we had promised them that they might always live there unmolested. Our people went there and discovered gold, and one of you who sits here now was in that country when gold was discovered, and was a gallant officer of the Army at that time, and he knows, and all of us who have read the history of the time know, that our prospectors went there and overran that country. Custer was sent there and attempted to take those people out, but it was a never-ending wave that came back, for as fast as those people were driven out away from the reservation at one point they would come back into it at another. It is all right; it was one of the inexorable demands of civilization. The gold was there and we were going to have it if we crushed the Indian, and we crushed him, or tried to.

The CHAIRMAN. Mr. Robeson, this is very interesting, but that has practically nothing to do with this matter.

Mr. ROBESON. I was asked to enumerate some wars.

The CHAIRMAN. Yes; but you went on to enlarge upon that statement.

Mr. PEYTON. Will you let me make a suggestion, that in none of these wars was there ever by the United States an abrogation of any of the treaties with the Indian tribes?

Mr. HOWELL. Do you regard the war in Utah in 1866 and 1867 with Black Hawk and his band as a war?

Mr. ROBESON. Not by any means, because the tribes from which Black Hawk's band was recruited were always in amity with the United States. The Ute Indians in 1865 and 1867 were friendly in Utah just as the majority of them were in 1879 when Thornburgh was killed.

Mr. HOWELL. It took almost the entire militia to protect the settlers against Black Hawk and his band.

Mr. ROBESON. Yes, sir; they raided from Provo down to the southern border of Utah, east and west, and committed many depredations, but that band sometimes numbered 20 persons, and never at any time did it exceed 100. The Court of Claims has written a very interesting opinion regarding the operations of that band; but it could not be called a warlike body, because it was, as I have said, made up of renegades taken from tribes which were at the time in amity with the United States.

Mr. HOWELL. Was not the engagement with Geronimo a war?

Mr. ROBESON. No; he had Indians there of several different tribes which were in amity with the United States.

Mr. HOWELL. You mean the San Carlos Indians?

Mr. ROBESON. Yes, sir; the San Carlos Indians. Several tribes of Indians had been taken to the San Carlos Agency.

The CHAIRMAN. Mr. Robeson, let me suggest that the five minutes you asked for have now nearly extended into fifty.

Mr. ROBESON. May I have but a moment in which to conclude?

The CHAIRMAN. Certainly.

Mr. ROBESON. There are in my office and in the offices of Messrs. King & King and Isaac R. Hitt perhaps 5,000 cases.

Mr. THOMPSON. You do not mean that there are 5,000 which would be reinstated?

Mr. ROBESON. Certainly not, for among those 5,000 cases are included those which have gone to judgment, either for claimants or defendants, those which have been dismissed for various reasons, as for want of sufficient evidence or for failure to prosecute.

Mr. STEPHENS. What I want to get at is how many cases would be affected by this law; how many will be restored and put on the docket.

Mr. ROBESON. Not more than 2,000 cases.

Mr. STEPHENS. And what would be about the average amount that is carried in those cases?

Mr. ROBESON. Less than \$1,000. The average is down now to \$1,045.

Mr. HACKNEY. I would like, with the consent of the chairman, to make clear that statement about 5,000 cases. You meant one thing. Mr. Robeson, and I had in mind, as did Mr. Stephens, another.

Mr. ROBESON. What I mean to say is that the three firms referred to have handled altogether nearly half the cases originally filed. Twenty-five hundred of these have been disposed of in one way or another. There are not over 500 of that 5,000 which will go to judgment unless the law is amended. There are not more than 2,000 of all cases represented by all attorneys which will go to judgment if the law is amended as attempted in this bill. Estimating that there will be about 2,000 cases restored, and that the amounts claimed in those cases will be \$3,000 on an average, we would have an aggregate amount claimed of about \$6,000,000. If the difficulty in securing the testimony continues, as it will certainly do, we will recover about one-fourth of the amount claimed; so that there will be much less than \$2,000,000, in my judgment, which will be charged to the United States by reason of the reinstatement of these cases. Six years ago my mail brought fifteen or twenty letters a day regarding Indian depredations cases. I do not receive that many letters regarding them now in two weeks, simply because our clients are dead, their witnesses are dead or scattered to such remote places that we can not discover

them, and we can therefore no longer secure testimony. It therefore becomes more difficult as the years pass to prove a claim. And any statement here regarding the probable amount of the increased liability of the United States must be modified and qualified by that condition. I believe that in the number of cases now on the dockets susceptible of judgment the aggregate will not exceed \$800,000.

Mr. STEPHENS. Mr. Robeson, I believe you made a statement in 1904 in this matter. Will you please examine this paper [handing Mr. Robeson a paper]?

Mr. ROBESON. Yes, sir; I made a statement in 1904 which is entirely too liberal, and I believe the statement made by the Attorney-General is likewise too liberal, inasmuch as it slightly exceeds mine. At that time, 1904, the amount claimed in the cases then pending was \$22,000,000, and since then the United States has dismissed about 2,500 of the cases.

Mr. STEPHENS. Would any of those be reinstated?

Mr. ROBESON. Some of those would be; yes, sir. A great many of those cases have been dismissed for want of prosecution. Parties did not prosecute because they did not have their witnesses. Those cases would not be reinstated. Some of the cases in which motions were made for dismissal for want of prosecution were doubtless affected by the decisions on amity, and for that reason the claimants have not taken testimony. So it is possible that some of the cases dismissed for want of prosecution will be reinstated, but those dismissed under the rule of court for that reason will not be reinstated by this act.

The judgments of the Court of Claims at this session are 50 in number, and the amount of the judgments is \$55,000. As we have given our personal attention to the taking of testimony in those cases in Texas and in various sections of the country, I believe that the total liability of the United States by reason of the reinstatement of the cases for any of the reasons I have given here and the removal of these requirements which we seek to remove by this bill will not exceed \$2,000,000.

I wish to say to the committee, in conclusion, that I am here to represent a people who have done their part in bearing the burdens and the cares of citizenship in the United States. There is not a State west of the Mississippi, with the exception of Iowa and Wisconsin, whose citizens are not interested in the passage of this act. There is not a State whose citizens will be benefited by the passage of this act that does not contribute more in one year to the payment of pensions by the Government than it will receive in six or eight years from Indian depredations if you amend this law in all the particulars I have suggested. We pension the people who served in the Army. These people who have given us equally as good service, and as great service, and service of as much benefit to the United States, are here, not asking for any pension or bounty, but are asking you to pay them for the property they lost. They say that you did not tell them when the Indians were hostile and they could not remove their property; they did not know when the Indians were hostile, because one Indian looked like another, and the condition of the Indians at one time was practically their condition at another time.

Now, I say that these people are here asking reimbursement for property actually taken or destroyed. We are denying it to them.

upon a hypercritical, technical proposition, that if we give them this money we will violate that ancient and honored principle of the Government that we will not pay damages occasioned in time of war.

At the request of a member of the committee I have prepared a brief of this argument, which I ask may be attached at its conclusion.

I am obliged to the committee.

STATEMENT OF HON. JOHN G. THOMPSON, OF THE DEPARTMENT OF JUSTICE.

The CHAIRMAN. The committee, Judge Thompson, would be very much obliged if you will give it any information that you have that would assist us in arriving at a proper determination of this subject.

Mr. THOMPSON. Mr. Chairman and gentlemen, this subject, as you have learned from the discussion of it, is one about which many arguments can be presented on both sides. This committee has heard so much about it that I am sure it is reasonably familiar with the subject, and I do not intend, unless the committee desires it, to go into any extended argument. Since I have been connected with the Department of Justice it has been the policy of the Department to furnish the committee all information that it has, or at least such as the committee desires, upon any subject, leaving the rest to the legislative discretion.

The application for relief is founded very largely upon the promise of the Government eventually to indemnify citizens or inhabitants for loss of property taken by Indians. The first of these statutes was passed in 1796, and there have been various statutes since then concerning this subject, from 1796 to 1834.

In 1859 the United States, by an act of Congress, provided that it should not be liable for depredations of Indians committed after that time, but did not repeal its liability as to depredations committed before that time. Then, from 1859 until 1891, when the present act was passed giving the Court of Claims jurisdiction over these claims, there was no liability on the part of the United States. That act of 1891 gave to the Court of Claims jurisdiction to hear and determine and render judgments in these cases against the United States and the Indian tribe where it could be ascertained, and assumed liability for the depredations that had been committed from 1859 to 1891.

Now, in all of those statutes that were passed the United States said to the citizen, or to the inhabitant, that it would eventually indemnify him for the loss of property taken by Indians, but did not promise to indemnify for loss of property taken by Indians in time of war; that is to say, every statute that was passed provided that they would eventually indemnify the citizen or inhabitant for any property taken by any Indian tribe in amity with the United States. That was the original promise of the Government.

So that we come down, it seems to me, to the pure question of whether or not this committee wants to recommend a bill to Congress, or whether or not the Congress wants to pass a bill reversing the policy of the Government during all of that time.

Mr. STEPHENS. What would be the difference in the claims if we put in that word "amity;" that is, in amount or number of claims and amount of money?

Mr. THOMPSON. I am coming to that in a moment. I was speaking of the other matter, so that if the committee did not already understand it, it would understand it. The theory of all these statutes requiring amity was that a nation under the well-settled rules of international law did not pay for property taken or destroyed in time of war.

Coming to the question of the requirement of citizenship, the old statutes were different from the new in that all of the earlier statutes provided for indemnification to the citizen or inhabitant, while the act of 1891 limits the right of recovery to a citizen of the United States, thereby cutting off the inhabitant who was not a citizen from recovery.

Mr. ROBESON. The word "band" was not in the old statutes, was it?

Mr. THOMPSON. No; the word "band" was first used in the act of March 3, 1891.

Mr. THOMPSON. When I was before this committee nearly four years ago I estimated that striking out the word "amity" where the Indians were hostile at the time, would result in the payment by the United States eventually of an additional \$5,000,000, not in amount claimed but in the amount that would actually go to judgment. At that time it was very largely a guess, and had to be an estimate. Since that time this work has progressed until practically 80 per cent—I guess a little more than 80 per cent—of the total number of cases have been disposed of. We keep a judgment docket in which is recorded every case that is disposed of, showing whether or not it went to judgment against the United States, and what Indians, and for what amount, and, where it was dismissed, showing the amount of the claim and for what reason it was dismissed.

Now, taking the judgment docket to-day, with 80 per cent of the cases disposed of, and there have been dismissed for want of amity in amount claimed (that would not be the amount that would go to judgment, but in amount claimed), there have been dismissed \$7,942,000. That is, in round numbers, \$8,000,000 have been dismissed up to this time for want of amity where it is shown on the judgment docket. In addition to that a great many cases, some 2,000, have been dismissed for want of prosecution. Unquestionably in those 2,000 cases are a number of cases where the reason that they were not prosecuted was because the court had held that the Indians were not in amity, and consequently the claimant took no further action in the matter, and they were dismissed for want of prosecution.

Mr. STEPHENS. That class of cases, then, would be restored to the docket by this bill?

Mr. THOMPSON. Yes, sir.

Mr. STEPHENS. How much would that amount to?

Mr. THOMPSON. We have estimated that that particular item would probably amount to a million dollars in amount claimed. Of course, in giving these amounts, do not get it confused with the idea that there would be judgment for that amount, but that is the amount in the petitions. In addition to that there are a number of cases that have gone to judgment where there would be, for instance, two or three items—two or three depredations in the same petition, but of different dates. Perhaps one or two of them came in a period

when the Indians were hostile, and the others came when the Indians were not hostile, and that particular item in the petition went to judgment; the other two items in the petition were dismissed for want of amity, but that is not shown on our judgment docket, and of course that would enter into it. We have estimated the best we can that that would probably amount to a million dollars in amount claimed. Then there are still remaining on the dockets, undisposed of, in the neighborhood of 2,200 cases. Among those cases there are unquestionably cases that would be affected by the defense of want of amity, just how many it is impossible to tell; but we have thought a moderate estimate of that, in the amount claimed, would be a million dollars, there being some \$7,000,000 undisposed of, making the total of the amount claimed by the claimants that would probably be affected by amity, and would be restored to the jurisdiction of this court by this legislation, \$11,000,000—that is, in amount claimed.

When I was here four years ago I estimated that one-third—probably one-third, or 40 per cent of the total number of claims—failed, which would have made \$15,000,000 in amount claimed, and which we then estimated would result in \$5,000,000 for judgments. With this additional information that has come to us from the disposal and dismissal of these cases, we would have to start out with \$8,000,000 already disposed of, so we can get much closer to it than we did before.

Mr. STEPHENS. Eight out of eleven?

Mr. THOMPSON. Yes, sir; eight out of eleven having already been dismissed. So I have estimated, taking the same percentage if each case went to judgment, the same percentage of the amount claimed, that would make this estimate result in judgments against the United States if this law is passed, and these cases are reinstated, amounting to \$3,750,000, that, of course, upon the assumption that all these cases in which \$11,000,000 was claimed would go to judgment. That would not be true. They would not all go to judgment, because some of them would fail for want of proof, and that far it would reduce the per cent; but on the other hand in that \$8,000,000 claimed in the cases there is an item of probably \$500,000 in these allowed cases that you have been hearing about in this hearing. Those were cases that were investigated by the Secretary of the Interior and allowed by him, and in almost every instance he allowed the claim for a very much less amount than was originally claimed in the petition.

Now, unless we reopen that case, or unless the claimant reopens it, if this defense of want of amity is taken away and they are reinstated, they would go to judgment just as soon as they could be presented to court for the amount allowed by the Secretary of the Interior, and if none of them are reopened they would go to judgment (a little less) very soon. That would bring up the percentage somewhat for \$500,000 (I would say possibly a little more; it might be what. Then there are quite a number of cases—just how many it is impossible to say—but quite a number of very good cases and quite large cases that were well proved before the court decided that at the particular time this property was alleged to be taken, these Indians were not in amity. So that those cases being very well proved now, will probably be ready for trial and there probably will be no difficulty in getting the evidence in those cases. So they would probably run to a pretty large per cent, and of course in connection with

that it is only fair to say that the time, in these cases that have been dismissed for want of amity, and with the time going along ten or fifteen years, witnesses have died, and it is much more difficult to get evidence for the claimant or the defense even, for that matter, than it formerly was.

So that in estimating that we simply have to average that up, and the conclusion we have come to in the office is that, taking into consideration these allowed cases and taking into consideration quite a large number of pretty large cases that are already proven, it would result in a pretty large per cent of the amount claimed, and probably the estimate of \$3,750,000 would be pretty close to the amount of money judgments that would be rendered against the United States in the long run.

Mr. STEPHENS. In making that estimate do you take into consideration the amount that would be recovered if the "inhabitant" clause is changed as provided for in this bill?

Mr. THOMPSON. No, sir. Coming now to the question of citizenship, there have been dismissed for want of citizenship some 300 cases, involving considerably more than a million dollars, and \$200,000 of that, or about \$200,000, were claimed by the Indians against the United States. Four years ago, before the committee, I estimated that striking out the word "citizenship" and giving inhabitants the right to recover, would probably increase the liability of the Government \$500,000. I do not see any particular reason to change that; we have had, that I can see, no reason to change it. As the committee understands, of course it is an estimate and considerably of a guess, but in any event there would be restored to the docket in amount claimed considerably more than a million dollars on the question of citizenship.

The CHAIRMAN. May I ask you there if you see any special reason why, assuming that we should pay the citizens, that we should pay the inhabitants?

Mr. THOMPSON. Well, it would only be upon the theory—or at least it would be largely upon the theory—that the original statutes were original promises of the United States of indemnity—promised indemnity to the inhabitant as well as the citizen.

The CHAIRMAN. That is the promise that was abrogated in 1859?

Mr. THOMPSON. No; they did not abrogate that promise, as I understand, in 1859; they simply provided in 1859 that from that date the United States would no longer be liable for Indian depredations.

Mr. ROBESON. To citizen or inhabitant?

Mr. THOMPSON. To anyone from 1859. Congress did not take away the liability of the Indian, but provided that after that date the United States would not be further liable, and that condition existed until 1891, when Congress enacted the present law, which assumed liability for the depredations that had been committed from 1859 down to that date.

The CHAIRMAN. What proportion of those claims is founded upon depredations made prior to 1859?

Mr. THOMPSON. Less than 10 per cent.

Mr. MORSE. There is no question of a promise to pay, but there would be no moral liability on the part of the Government for any depredation or for damages or depredations after 1859, would there?

Mr. THOMPSON. Not except the statute of 1891.

Mr. MORSE. Which was retroactive in a way?

Mr. THOMPSON. It was retroactive; yes, sir—back to 1859 and from that time on, there being no liability in the meantime.

Mr. ROBESON. Judge, may I call your attention to the fact that the Court of Claims has held, and the Supreme Court has affirmed the finding, that the liability of the United States is traceable directly back to the trade and intercourse act of June 30, 1854; that there is the basis of the liability of the United States.

Mr. THOMPSON. Yes, sir; they have decided that, and that, to some extent, might affect the question asked just now, and it perhaps would not be correct to say that there was no moral reason why they should not do it from 1859 down, but, as a matter of fact, from 1859 to 1891 there was no legal liability on the part of the United States for claims that accrued, or at least for depredations that accrued, during that period.

Mr. STEPHENS. As a matter of fact, have not the Indians been more hostile on the frontier since the civil war—that is, during the period of the civil war—than they were before? I know it has been so in my country for several years.

Mr. THOMPSON. There is no question in my mind that about the commencement of the civil war, and for a number of years thereafter, there was a very hostile period.

Mr. STEPHENS. It was at a time when the soldiers were withdrawn, thereby giving the Indians a chance to go on the warpath successfully, and after they had once tasted blood and engaged in plunder it was a hard matter to do anything with them.

Mr. HOWELL. What machinery did the Government employ in settling those Indian depredation claims prior to 1859? Did they come direct to Congress?

Mr. THOMPSON. I think they came direct to Congress before that. How about that, Mr. Robeson?

Mr. ROBESON. They came direct to Congress. The Secretary was not put in charge of them until after that time.

The CHAIRMAN. Judge, do you care to state, and if so, what do you say as to the moral or legal obligations of the Government to pass such a statute as is here requested?

Mr. THOMPSON. Personally, I would be pleased to answer that, but I do not know that I ought to make a statement on that proposition.

The CHAIRMAN. I do not ask you to make it if you would rather not.

Mr. THOMPSON. The only objection I have to doing it is that I know it has been the policy of the Department not to give opinions upon a matter of what Congress should do or should not do.

Mr. STEPHENS. Has this bill been submitted to the Department?

Mr. THOMPSON. I have had a copy of the bill. The committee, after the bill was printed, by some mistake, sent it to the Commissioner of Indian Affairs, and after working over it for several days they came over to see me about it.

The CHAIRMAN. It was my intention to have it sent direct to you.

Mr. THOMPSON. Yes, sir; I have had this bill for plenty of time to look it over.

The CHAIRMAN. But you are not here advocating its passage.

Mr. THOMPSON. No, sir; by no means.

The CHAIRMAN. Its passage would mean a prolongation of the work which you now have in hand, as the head of, would it not?

Mr. THOMPSON. Yes, sir.

The CHAIRMAN. How large a force is now employed by you—or I will put it in another way—how large an appropriation have we been making in late years for the continuance of the work under your charge?

Mr. THOMPSON. The appropriations for several years after I came here was \$52,000 a year. For some two or three years during that time I did not use all of the appropriation. Then it was reduced at my suggestion to \$40,000 a year, I think, and I am now using about \$35,000 a year. Between \$30,000 and \$35,000 a year is all the appropriation that is made in defense of these claims.

The CHAIRMAN. Without a modification of the statute, when do you see an end to the present work?

Mr. THOMPSON. The next two years, at the farthest, ought to see this work so far completed that it will not be necessary to have it in charge of any particular bureau. Of course, there will be scattering Indian depredation claims in the absence of the amendment of the statute for a number of years. They will probably have to be placed in the charge of some man who will investigate them and try them as they come along, but the work, so far as it pertains to the work of the Bureau, or a particular division, will end inside of the next two years, unquestionably.

The CHAIRMAN. Is it now a bureau of Indian depredations of which you are the head?

Mr. THOMPSON. Yes, sir.

The CHAIRMAN. In the Department of Justice?

Mr. THOMPSON. Yes, sir.

Mr. PEYTON. Mr. Chairman, may I ask a question?

The CHAIRMAN. If Judge Thompson is willing.

Mr. THOMPSON. Certainly.

Mr. PEYTON. Has there ever, since this act was passed, been any amendment to the act at all by Congress?

Mr. THOMPSON. No, sir; I think not.

The CHAIRMAN. The act of 1891, you mean?

Mr. PEYTON. Yes, sir; the act of 1891.

Mr. THOMPSON. I have a tabulated statement here of the condition of the business, and I can either read it to the committee or give it to the stenographer.

Mr. STEVENS. Mr. Chairman, would there be any objection to its being printed?

The CHAIRMAN. No; all of these hearings will be printed as soon as possible.

Mr. THOMPSON. I have one statement here showing the amount of work that has been done, in other words, the number of cases that have been disposed of from the time the act of 1891 went into effect down to November 1, 1907; that was November after the June when I took charge of the work. Then I have another statement showing what has been accomplished in the matter of the disposition of cases from November 1, 1897, to November 1, 1907. Then I have a further tabulation of the condition of the entire work at the present time, showing the number of cases filed, the amount claimed, the number of judgments, and the total amount of judgments, and the number of

cases left. I will hand this to the reporter, and he can insert it in the record.

(The statements are as follows:)

Figures to November 1, 1897.

Number of cases acted upon.....	1,241
Amount claimed in such cases.....	\$5,430,883.23
Judgments for claimants.....	681
Amount claimed in such cases.....	\$2,578,281.11
Amount of judgments for claimants.....	\$1,374,710.71
Judgments for defendants.....	569
Amount claimed in such cases.....	\$2,852,002.12

Since November 1, 1897.

Number of cases acted upon.....	7,458
Amount claimed in such cases.....	\$31,100,150.43
Judgments in favor of claimants.....	2,289
Amount claimed in such cases.....	\$9,499,282.17
Amount of judgments for claimants.....	\$3,483,181.00
Judgments in favor of defendants.....	5,169
Amount claimed in such cases.....	\$21,600,877.26
Total number of cases filed.....	10,841
Amount claimed.....	\$43,515,867.06
Cases in judgment.....	8,699
Amount claimed.....	\$36,531,042.66
Judgments in favor of claimants.....	2,970
Amount claimed.....	\$12,077,563.28
Amount of judgments.....	\$4,857,891.80
Judgments in favor of defendants.....	5,729
Amount claimed.....	\$24,453,479.38
Judgments for year ending November 1, 1907.....	50
Amount claimed.....	\$184,276.50
Amount judgments.....	\$55,174.00
Judgments for defendants same period.....	490
Amount claimed.....	\$1,739,381.05
Cases now pending.....	2,142
Amount claimed.....	\$6,984,824.40

The CHAIRMAN. May I ask you generally since the act of 1891 how much the United States has paid in discharge of the Indian depredation claims?

Mr. THOMPSON. The total amount of judgments that have been appropriated for from the time the act went into effect down to the present time is \$4,857,891.80. Whether or not those judgments have all been paid I do not know, but I assume that most of them have.

The CHAIRMAN. And in the meantime there has been appropriated for the conduct of the bureau about three-quarters of a million of dollars from what you have said.

Mr. THOMPSON. I do not think I know what the appropriation was for the first three years. The appropriation for about five years, as I remember it, was \$52,000 a year. Since then it has run considerably less, in sixteen years.

The CHAIRMAN. Well, it is upward of half a million dollars.

Mr. THOMPSON. I should think it would be about that.

The CHAIRMAN. During that period how much less was recovered than was claimed?

Mr. THOMPSON. Very much less. The cases that have gone to judgment since the act went into effect number 8,699—that is, cases that have been finally disposed of. The amount claimed in those cases,

8,699 in number, was \$36,531,042.66. Of these judgments the claimants were successful in 2,970 cases. In those cases there was claimed \$12,077,563.28. In those cases they recovered judgments for \$4,857,891.80. The judgments for the defendants of that entire amount—those were cases in which the Government was entirely successful—numbered 5,729, and the amount claimed in those cases that were decided in favor of the Government and were dismissed was \$24,453,479.38. That was the condition down to the 1st of last November.

The CHAIRMAN. Well, summarized, that is practically this: That of the cases prosecuted since the passage of the act of 1891, one-third have made recovery and in two-thirds there have been judgments for the defendant; and in the one-third of the cases where there was a recovery, one-fourth of the amount claimed was recovered.

Mr. THOMPSON. About one-third of the amount claimed.

The CHAIRMAN. Yes; about one-third.

Mr. THOMPSON. Not quite one-third. Now, there is a matter in this bill that I want to call the attention of the committee to, and I think Mr. Robeson will agree with me on this proposition. This first section of the bill reads, "All claims for property of citizens of the United States or inhabitants thereof." Now, lately, or within the last few years, Congress has made citizens of the Indians living in the Indian Territory, and they are as much citizens, legally, now, as anyone else. They had filed claims to the extent of \$200,000 or \$300,000 against the United States where the property was sometimes taken by the other Indians—I mean Indians of other tribes—and sometimes Indians of their own tribes, and the Indians are liable there only in case there is a treaty which provides for their payment, and sometimes those claims are laid before the Secretary of the Interior; and unless the committee in reporting this bill wants to provide that these Indians who had formerly had tribal relations shall have the right to recover it, or to make the exception there of Indians who have heretofore had tribal relations, it should be eliminated. I do not think that that was put in with the idea of including those Indians, but I think it would.

Mr. ROBESON. I perfectly agree with you.

Mr. STEVENS. What suggestion would you make of an amendment to cover that?

Mr. ROBESON. "Excepting those Indians in tribal relations."

Mr. THOMPSON. I have made the change here, "excepting Indians heretofore having tribal relations."

The CHAIRMAN. Were the Five Civilized Tribes citizens in 1891?

Mr. ROBESON. No, sir; not until 1901.

Mr. THOMPSON. Then there is another provision in the twelfth line of that first section where it provides that, "or shall hereafter become citizens of the United States, taken or destroyed within the limits of the United States by Indians belonging to any tribe or nation subject to the jurisdiction of the United States." That provision, "within the limits of the United States," would probably give the right to a citizen or an inhabitant to recover for property taken when he was unlawfully within the Indian country. Now, he can not recover if he was a trespasser upon an Indian reservation or had no legal right to be there and lost his property. That provision would

probably give him the right to recover, notwithstanding the fact that he had wrongfully gone into that country.

The CHAIRMAN. Judge Thompson, will you be kind enough to write us a letter calling our attention to these facts and suggesting the amendments that occur to you?

Mr. THOMPSON. I will be very glad to do it.

Mr. ROBESON. I agree with that, Judge Thompson.

Mr. MORSE. I would like to ask a question, and I do not know whether I am asking a proper question, but I would like to ask if these contracts between attorneys and claimants are submitted to either the Department of Indian Affairs or the Department of Justice for confirmation.

Mr. THOMPSON. Oh, no; the act of 1891 provides that the court shall allow the fee.

Mr. ROBESON. And it makes it most ridiculously small.

Mr. HOWELL. Does that preclude the right of a citizen to contract with an attorney to represent him in the Court of Claims?

Mr. ROBESON. It does not.

Mr. HACKNEY. What is the effect of that provision then?

Mr. ROBESON. It avoids all former contracts before the act was passed. Some contracts were exorbitant, and the act of 1891 avoids those contracts. After that time claimants might contract. The court is authorized to fix a fee of 15 per cent except where unusual services have been rendered or expenses incurred, in which case they allow 20 per cent. May I be pardoned for saying to the committee that cases could not be prosecuted for a fee of 15 per cent, because the expenses of prosecution are so very considerable that they consume a 15 per cent fee.

Mr. STEPHENS. Is the amount of the fee stated in the judgment?

Mr. ROBESON. Always, and a judgment is rendered in favor of the attorney out of the proceeds.

Mr. SAUNDERS. Do you understand that counsel can contract under the present law and that is subjected to the ratification of the Court of Claims?

Mr. ROBESON. No, sir; that does not go to the court. These claimants are all poor and can not pay their expenses—that is, the average claimant—and therefore the attorney has to pay the expenses himself, sometimes even for the attendance of witnesses. The court can allow 20 per cent. I will say to you frankly that it is my custom to take an extra contract for 5 per cent. If I get the court to allow me 20 per cent, I get 25 per cent; if 15 per cent, I get 20 per cent, and that 20 per cent allowance includes the cost of printing. We do not get paid for printing in a case that we lose, and we lose in a great many cases where it is necessary under the rule of the court to print.

Mr. THOMPSON. Inasmuch as the committee has asked me to write a letter suggesting some amendments, I do not know of anything further that I want to say unless some member of the committee desires to ask some question.

Mr. STEPHENS. I hope you will write that letter, Judge, because it will put the matter in better shape for the committee.

The CHAIRMAN. If no member desires to interrogate Judge Thompson, we will consider the hearing closed.

(There being no further questions, the committee adjourned.)

BRIEF OF WILLIAM H. ROBESON, ESQ., IN SUPPORT OF THE BILL.

The first act with reference to Indian depredations provided "eventual indemnification" to any citizen *or inhabitant* of the United States for property taken, stolen, or destroyed by Indians. (1 Stat. L., 472, sec. 14.)

A similar act was passed in March, 1799 (1 Stat. L., 747, sec. 14); another, March 30, 1802 (2 Stat. L., 143, sec. 14).

These several acts were embodied in the trade and intercourse act of June 30, 1834. (4 Stat. L., 731, sec. 17.) This act provided for reimbursement to any citizen *or inhabitant* for losses occasioned by Indians, and that the owner or his representatives might make application to the superintendent, agent, or subagent, who should, under the direction of the President, make application to the nation or tribe to which the depredating Indians belonged. And it was provided if the Indians did not make satisfaction such further steps might be taken as should be proper in the opinion of the President, "and in the meantime, in respect to the property so taken, stolen, or destroyed, the United States guarantee to the parties so injured an eventual indemnification."

The guaranty of eventual indemnification by the United States was repealed by the act of February 28, 1859. (11 Stat. L., 401, sec. 8.) The remaining portions of the act, continuing the liability of the Indians, is embodied in section 2156 of the Revised Statutes.

The act of May 29, 1872 (17 Stat. L., 190, sec. 7), authorized the Secretary of the Interior to publish the necessary rules and regulations and prescribe the manner of presenting the claims under existing laws or treaty stipulations for compensation for depredations committed by Indians. It authorized an investigation by the Secretary of such claims as might be presented, by citizens *or inhabitants*, and directed a report to Congress annually of the nature, character, and amount of such claims, whether allowed by him or not, and the evidence upon which his action was based.

The act of March 3, 1885 (23 Stat. L., 376), authorized the Secretary of the Interior to make a complete list of all such claims filed in his Department, approved in whole or in part, and also of such claims as were pending but not yet examined, chargeable against any tribe by reason of any treaty between the tribe and the United States, which he was to report to Congress, after making such additional investigation and securing such further testimony as he might deem necessary to enable him to reach a determination.

The act of March 3, 1891 (1 Supp. R. S., 913), provided in its first section that the Court of Claims should have jurisdiction to adjudicate—

1. All claims for property of citizens of the United States taken or destroyed by Indians belonging to any band, tribe, or nation in amity with the United States, without just cause of provocation by the owner or agent in charge and not returned or paid for.

From this these things result:

1. The necessity of citizenship.
2. The necessity of a state of amity.

And from the decisions of the courts these:

1. Citizenship relates not to the time of the passage of the act, nor to the time of the filing of the petition, nor to the time of the judgment, *but to the date of the depredation.* (Valk v. U. S., 29 Ct. Cls. 62; Contzen v. U. S., 179 U. S., 191.)

2. A band of a tribe in amity may be hostile, and its hostility will authorize the court to deny judgment. (Connors v. U. S., 180 U. S. 271; Montoya v. U. S., 180 U. S., 261.)

3. "In amity" means "relations of actual peace." (Marks v. U. S., 161 U. S., 297; Leighton v. U. S., 161 U. S., 291.)

This bill, No. 11316, provides:

1. A recovery for inhabitants.

2. For the elimination of the word "band."

3. For the elimination of the requirement of amity.

The word "inhabitants" is used in every act providing indemnification or authorizing payment until the act of March 3, 1891, conferring jurisdiction upon the Court of Claims. The promise of these acts has always been made to inhabitants as well as to citizens.

The same reason which impelled Congress to promise "eventual indemnification" to citizens would likewise have moved it to a similar promise to bona fide inhabitants. The reason was that Congress desired the settlement and development of the western country, and it offered to those within its jurisdiction, whether citizens or not, such guaranty of protection as is found in a promise of eventual indemnification. In this work of development the inhabitant could, and did, render as much service as the citizen.

Again it has been found that a number of claimants supposed that their service in the Army of the United States perfected their citizenship; others relied upon a declaration of their intention to become citizens. It is seldom that a noncitizenship case is found in which it does not appear that the claimant, under a misapprehension of his rights, has exercised and enjoyed the privileges of citizenship.

The word "band" has no business in the act of March 3, 1891. It was not in the act as agreed upon by the conference committee and reported to both Houses of Congress, though it appears in the bill as engrossed.

Nor was it ever in any act relating to Indian depredations until it was written into this act of March 3, 1891.

If the word "band" was properly inserted in this act, it was surely the intention of the framers of the bill that there should be a recovery for Indians belonging to any aggregation, whether that aggregation was known as a "band," a "tribe," or a "nation"; but, as shown, the courts have held that a band of a tribe may be hostile and that judgment will be denied, though the tribe to which it belonged was in amity.

This construction of the word "band" in the act produces an effect which violates also the promise of Congress contained in the previous acts on the subject, where only the word "tribe" is used.

This bill removes the requirement of amity.

It is true that all the acts from 1796 down to and including the present jurisdictional act provide for reimbursement for depredations committed by Indians only when the tribe was in amity.

The difficulty is not so much with the requirement as it presents itself to the average mind, but with the hypercritical technicality

with which the court has considered it in defining the meaning of the words.

Ordinarily a tribe might be said to be in amity when it is not at war, and, notwithstanding the decisions of the courts, a broad and liberal construction of this term, such as should be given to a remedial statute, would render impossible any status between one of war and one of amity. But the courts have decided that the term means "in relations of actual peace." And in following this definition they have made these declarations:

1. The existence of a treaty and continued recognition of the same by the executive department is not conclusive of a continuance of peaceful relations. (*Love v. U. S.*, 29 Ct. Cls., 332.) There has never been the abrogation of a treaty with Indians on account of hostility, except in the case of the Sisseton and Wahpeton Sioux, who engaged in the massacre of 1862 in Minnesota; and in that case the abrogation of the treaty working a forfeiture of the annuities, Congress by a recent act restored the annuities, authorized suit to be brought in the Court of Claims to state the account of the annuities, and the Supreme Court on Monday, February 24, 1908, gave a judgment in favor of the Indians for about \$800,000.

The decision above referred to (*Love v. U. S.*) disregards a long line of decisions to the effect that a long-continued departmental construction of an act, while not binding upon the courts, will be highly regarded by them in their own interpretation.

In the case of a doubtful and ambiguous law, the contemporaneous construction of those who have been called upon to carry it into effect is entitled to great respect. (*Hahn v. United States*, 107 U. S., 402; *Stuart v. Laird*, 1 Cranch, 299; *Martin v. Hunter*, 1 Wheat., 304; *Cohens v. Virginia*, 6 Wheat., 264; *Edwards v. Darby*, 12 Wheat., 210; *Union Ins. Co. v. Hoge*, 21 How., 35; *United States v. Alexander*, 12 Wall., 177; *Peabody v. Stark*, 16 Wall., 240; *Smythe v. Fiske*, 23 Wall., 374; *United States v. Moore*, 95 U. S., 760; *Cooper Mfg. Co. v. Ferguson*, 113 U. S., 727.)

The construction given to a statute by those charged with the duty of executing it ought not to be overruled without cogent reasons. (*United States v. Moore*, 95 U. S., 760; *Brown v. United States*, 113 U. S., 568.)

The Supreme Court said: "It is our duty not to overrule the construction of a statute upon which the Land Department has uniformly proceeded in its administration of the public lands, except for cogent reasons." (*McMichael v. Murphy*, 197 U. S., 304-312, citing *United States v. Johnston*, 124 U. S., 236; *United States v. Alabama G. S. R. Co.*, 142 U. S., 615; *United States v. Philbrick*, 120 U. S., 52; *United States v. Healey*, 160 U. S., 136.)

In the case of *Potter v. Hall* the Supreme Court upheld a well-established rule of the Interior Department, saying: "And, as we consider that the rule thus applied in the practical administration of the statute by the officials by law charged with its execution conforms to its intention, we are unwilling to overthrow it by a resort to a narrow and technical construction." (189 U. S., 292-300.)

It has been decided that to constitute a want of amity it is not necessary that there have been engagements with troops (*Allred*, 36 Ct. Cls., 280; *Luke*, 35 Ct. Cls., 15; *Painter*, 33 Ct. Cls., 114); that

hostilities with settlers alone establishes a state of war (*Marks v. U. S.*, 161 U. S., 297; *Montoya v. U. S.*, 180 U. S., 261), and that the cause of hostility is immaterial, whether it be inaugurated by the Indians or by the United States, justly or unjustly (*Leighton v. U. S.*, 161 U. S., 291).

The reason given for the insertion of the words "in amity" is that it is a well-established policy of nations not to pay for damages occasioned by the enemy in time of war, to which it is replied: That the policy referred to is one which prevails among independent sovereignties, but that the relations of the Indians to the United States being those of a ward to his guardian it is impossible that there should be a want of amity.

Chief Justice Marshall first declared that the Indian tribes in the United States are "domestic, dependent nations." (*The Cherokee Nation v. Georgia*, 5 Peters, 1.) In an opinion also by Chief Justice Marshall (*Wooster v. Georgia*, 6 Peters, 515) this declaration was reiterated; and in both it was declared "their relation to the United States resembles that of a ward to his guardian." No court has had the temerity to otherwise describe the relations between the United States and its Indian tribes, but in numerous cases these two decisions have been closely followed. (*Holden v. Joy*, 17 Wall., 211; *Elk v. Wilkins*, 112 U. S., 94; *Eastern Cherokees v. U. S.*, 117 U. S., 288; *U. S. v. Kagama*, 118 U. S., 375; *Stephens v. Cherokee Nation*, 117 U. S., 445; *Jones v. Meehan*, 175 U. S., 1.)

Section 2 of the bill authorized an amendment of the petition at any time before judgment, so as to designate correctly the tribe by members of which the depredation appears to have been committed.

The present jurisdictional act (1 Supp. R. S., 914, sec. 3) provides that the petition shall name the "tribe or tribes or band of Indians by whom the alleged illegal acts were committed *as near as may be*." And by section 5 (*Ibid.*, 915) the court is to render judgment against the United States "and against the tribe of Indians committing the wrong, *when such can be identified*."

The Court of Claims decided in the case of *Duran v. United States* (31 Ct. Cls., 353) that it would permit an amendment at any time. But in the recent case of *United States v. Martinez* (195 U. S., 469) the Supreme Court decided that unless the amendment was made before the expiration of the time in which suits might be brought the suit must be dismissed if the proof showed the responsibility of any other Indians than those named in the original petition.

The reason for the proposed amendment is that in nine cases out of ten, the depredations being committed at night, or not in the presence of eyewitnesses, no one could with certainty and accuracy identify the tribe to which the depredating Indians belonged.

This opinion of the court was dissented from by Justices White and McKenna, who could not reconcile it with any decision wherein the court had held that where the Indians were unknown judgment might be rendered against the United States alone. (*Gorham v. U. S.*, 165 U. S., 316.)

Section 3 provides that where a petition has been filed by any party in interest, whether such party was the sole owner of the property or not, may, at any time, be amended by the substitution of all the parties in interest or by personal representatives.

Some years ago the court declined to permit an amendment of a suit brought by one heir, so as to bring in the other heirs, or an administrator of the estate. Later the heir or heirs who joined were permitted to recover their interests. Still later the court has permitted such amendment as would authorize all the heirs to join, or the substitution of an administrator. (*Davenport v. U. S.*, 31 Ct. Cls., 430.)

The purpose of this section is to confirm the court in its last opinion.

The jurisdictional act does not extend to claims accruing prior to July 1, 1865, unless such claims had been pending prior to March 3, 1891, before the Secretary of the Interior or other body or official authorized to inquire into such claims; and it defines "pending" to mean that evidence *must have been presented therein*. (1 Supp. R. S., 914, sec. 2.)

The Supreme Court has held that the claim was not pending unless such evidence had been filed as was prescribed by the rules of the Secretary of the Interior. (*Nesbitt v. Moore*, 186 U. S., 153.) These rules require, first, the application by the claimant or his agent; second, the sworn declaration of the claimant, stating the tribe of Indians, describing fully the property stolen or destroyed and giving the quantity of each article, or number, condition, or quality thereof, and the just value of each article or piece of property at the time it was taken or destroyed; third, the depositions of two or more persons *having personal cognizance* of the facts stated in the declaration, who must also tell when, where, and by what Indians the depredation was committed, and of what the property consisted, and the value thereof.

These requirements of the Secretary were absolutely unreasonable, because, in most instances, it was impossible to comply with them; and on evidence less rigid than that required by the Secretary of the Court of Claims has rendered hundreds of judgments.

Section 4 of this bill is designed to overcome this difficulty and to authorize the court to adjudicate any claims which had been filed before the Secretary. Upon these points it is noted that the Court of Claims declines to render judgment upon affidavits filed with the Secretary, declaring that it gives but little weight to them. (*Jones v. U. S.*, 35 Ct. Cls., 36.)

Section 5 of the bill provides for the reinstatement and readjudication of such cases as may have been dismissed by reason of want of citizenship, want of amity, failure to correctly designate the tribe in the original petition, lack of sole ownership, failure to comply, as to the claims accruing prior to July 1, 1865, with the rules of the Secretary. Upon this point the Attorney-General, writing with reference to a similar bill pending in the Fifty-sixth Congress, said:

The effect of passing the bill without a provision for the reinstatement of cases which have been heretofore decided adversely to claimants on jurisdictional grounds would be to banish those claimants who have been diligent in producing proof and pressing their claims to a hearing. (S. Doc. 404, 53th Cong., 1st sess., p. 3.)

Hundreds of cases have been voluntarily dismissed by claimants for some of the reasons now sought to be removed, with the understanding and belief that in the event of an amendment of the law they should be reinstated.

Table showing the average amount claimed and the average amount of judgments, and the average per cent in the various years since the jurisdictional act was passed.

Year.	Average amount claimed.	Average amount of judgment.	Per cent.
1892.....	\$3,706	\$1,977	53.3
1893.....	4,021	2,263	56.2
1894.....	6,286	2,629	43.0
1895.....	4,129	2,377	57.5
1896.....	2,900	1,667	57.5
1897.....	2,811	1,468	52.7
1898.....	3,562	1,864	53.3
1899.....	4,324	1,914	44.0
1900.....	3,868	1,650	42.5
1901.....	5,607	1,670	29.8
1902.....	4,726	1,776	37.4
1903.....	4,368	1,446	33.5
1904.....	3,370	1,600	33.3
1905.....	4,080	1,270	30.0
1906.....	3,000	1,045	33.3
1907.....	3,680	1,106	30.0

PAYMENT OF CHICKASAW NATION WARRANTS

HEARING

ON SEVERAL BILLS

BEFORE THE COMMITTEE ON INDIAN AFFAIRS
HOUSE OF REPRESENTATIVES

ON THE SUBJECT OF

WARRANTS OF THE
CHICKASAW NATION



WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

PAYMENT OF CHICKASAW NATION WARRANTS.

FRIDAY, *April 17, 1908.*

The subcommittee met this day at 10.15 o'clock a. m., Hon. Thomas Hackney (chairman) presiding.

Mr. HACKNEY. Mr. Taylor, whenever you get your data in shape we will hear you.

STATEMENT OF MR. J. R. TAYLOR, JR., OF MUSKOGEE, OKLA.

Mr. TAYLOR. Yes. I have the papers here together.

Mr. HACKNEY. State your full name and official position, Mr. Taylor.

Mr. TAYLOR. I am clerk to the United States Indian agent at the Union Agency, at Muskogee, Okla.

Mr. HACKNEY. How long have you held that position?

Mr. TAYLOR. About twelve years.

Mr. HACKNEY. In your official capacity has it been your duty to look after the matter of listing the Chickasaw Nation warrants?

Mr. TAYLOR. Yes, sir. It has been my duty to examine all warrants pertaining to the payment of claims of the Five Civilized Tribes.

Mr. HACKNEY. What classes of Chickasaw Nation warrants were outstanding at the time of the taking hold of the affairs of the Chickasaw Nation by the United States Government?

Mr. TAYLOR. There were two classes, known as the general fund and the school fund.

Mr. HACKNEY. Now, in a general way, state the form of these warrants; that is, what public official would draw the warrants, and on what official they were drawn.

Mr. TAYLOR. You want the way they originally started, or afterwards?

Mr. HACKNEY. In general terms state what officer of the Chickasaw Nation would draw them, and on whom they were drawn.

Mr. TAYLOR. The Chickasaw Nation have their own form of government.

Mr. HACKNEY. Without going into details about that, just state what officer of that nation did draw the warrants outstanding.

Mr. TAYLOR. It was the duty of the auditor of public accounts of the Chickasaw Nation to draw the warrants on the treasurer of said nation in payment of any indebtedness.

Mr. HACKNEY. Now, then, the warrants that were outstanding when the Government took charge of the matter of liquidating the claims against this nation were warrants drawn by the auditor of public accounts on the treasurer of the Chickasaw Nation?

Mr. TAYLOR. Yes, sir.

Mr. HACKNEY. Then you say they were on two funds, what would be called the general fund and the school fund.

Mr. TAYLOR. Yes, sir.

Mr. HACKNEY. Now, you have had submitted to you, or the office there in which you have been acting, a large number of outstanding warrants, have you?

Mr. TAYLOR. Yes, sir.

Mr. HACKNEY. Can you state the number of warrants submitted that were not paid by the Government?

Mr. TAYLOR. Yes, sir.

Mr. HACKNEY. What is that amount?

Mr. TAYLOR. Amounts aggregating \$113,000.

Mr. HACKNEY. In round numbers \$113,000?

Mr. TAYLOR. Yes, sir; warrants that had not been paid.

Mr. HACKNEY. By the Secretary of the Interior, or his representative?

Mr. TAYLOR. Yes, sir.

Mr. HACKNEY. Can you tell how much is of the general fund, and how much of the school fund?

Mr. TAYLOR. I can.

Mr. HACKNEY. Just give the total.

Mr. TAYLOR. General fund, aggregating \$103,000; school fund, aggregating \$10,000.

Mr. HACKNEY. You have figured simply the face of the warrant, without any interest on it?

Mr. TAYLOR. Yes.

Mr. HACKNEY. Can you tell approximately what time was covered by the dates of the warrants submitted for payment, from the earliest to the last date?

Mr. TAYLOR. They began in 1899, a few scattering warrants, but the date of the principal amount began about in 1902, and continued until 1906.

Mr. HACKNEY. Have you the figures showing the amount of warrants that were paid by the Secretary of the Interior or the Indian Office?

Mr. TAYLOR. I have a complete list of all warrants paid by the Indian agent, but I have not got it with me. It is on file now with the agent's account in the Department.

Mr. SHOCK. Perhaps he could approximate it.

Mr. HACKNEY. Could you state approximately what that would amount to, according to your best recollection? It might be a guess.

Mr. TAYLOR. In the neighborhood of \$750,000. We paid at various times aggregating in the neighborhood of \$750,000.

Mr. HACKNEY. Now, then, as to these warrants that were submitted to the Indian agent for payment, aggregating \$113,000, mentioned above, I wish you would state whether they were presented by the original holders or by some person who claimed to have purchased them.

Mr. TAYLOR. The original payees only presented a very small amount, probably 5 per cent.

Mr. HACKNEY. Have you a tabulated statement showing the holders and the amounts of their warrants presented, making up this \$113,000?

Mr. TAYLOR. Yes, sir.

Mr. HACKNEY. I wish you would just read that into the record, if you can not leave it here. I presume you have to return that to the office, do you not?

Mr. CRAGIN. I am inclined to think that the figures he has there are slightly at variance with the facts as between the Joplin National Bank and our bank, the First National Bank of Joplin. The agent at Muskogee, for instance, has given our bank credit for three warrants that belong to the Joplin National Bank, and he has credited them with two warrants that are ours. I have tried to straighten that out, and whether these figures here embody that correction or not I do not know; but you can tell.

Mr. HACKNEY. For the purpose of this inquiry it would probably make no difference. Then this statement you have is approximately correct?

Mr. TAYLOR. Yes, sir.

The document referred to is as follows: -

CHICKASAW WARRANTS—PAYMENT REFUSED.

Ardmore National Bank, Ardmore, Ind. T.:	
Class No. 14.....	\$2,000.00
American National Bank, Tishomingo, Ind. T.:	
Class No. 5.....	372.00
Class No. 10.....	204.00
Class No. 16.....	232.50
Total.....	808.50
Sam Black, Marietta, Ind. T.:	
Class No. 8.....	5,729.15
Class No. 10.....	340.00
Total.....	6,069.15
Class No. 25. \$100.35 (pending) paid.	
Bank of Muskogee, Muskogee, Ind. T.:	
Class No. 2.....	1,484.00
City National Bank, Muskogee, Ind. T.:	
Class No. 4.....	300.00
First National Bank, Chickasha, Ind. T.:	
Class No. 5.....	540.00
First National Bank, Joplin, Mo.:	
Class No. 2 (school).....	5,896.93
Class No. 2.....	8,200.50
Class No. 4.....	200.00
Class No. 5.....	738.00
Class No. 9.....	1,933.32
Class No. 10.....	724.00
Total.....	17,692.75
T. P. Howell, Davis, Ind. T.:	
Class No. 17.....	500.00
Head, Dillard & Head, Sherman, Tex.:	
Class No. 2.....	744.43
E. B. Johnson, Norman, Okla.:	
Class No. 17.....	2,500.00
Joplin National Bank, Joplin, Mo.:	
Class No. 2 (school).....	155.00
Class No. 2.....	448.35
Total.....	603.35
Class No. 22, \$2,046.10 (pending).	
A. N. Leecraft, Colbert, Ind. T.:	
Class No. 10.....	544.00
Class No. 17.....	500.00
Total.....	1,044.00

PAYMENT OF CHICKASAW NATION WARRANTS.

Lindsey National Bank, Gainesville, Tex.:	
Class No. 4.....	\$650.00
Class No. 8.....	625.00
Class No. 10.....	2,580.00
Class No. 14.....	1,400.00
Class No. 16.....	986.00
Class No. 19.....	44.00
Total.....	6,285.00
D. McCoy, Caddo, Ind. T.:	
Class No. 10.....	166.35
E. H. McDuffee, Woodville, Ind. T.:	
Class No. 10.....	772.00
L. H. Mickle, Tishomingo, Ind. T.:	
Class No. 10.....	36.00
McAnany & Alden, Kansas City, Kans.:	
Class No. 2.....	2,848.85
P. S. Mosely, Wapanucka, Ind. T.:	
Class No. 13.....	2,500.00
National Bank of Commerce, St. Louis, Mo.:	
Class No. 4.....	170.00
Class No. 8.....	625.00
Class No. 10.....	27,607.65
Class No. 14.....	3,000.00
Class No. 19.....	1,708.35
Class No. 23.....	3,870.00
Total.....	36,981.00
State National Bank, Denison, Tex.:	
Class No. 5.....	1,476.00
Class No. 10.....	1,044.00
Class No. 11.....	1,500.00
Class No. 18 (hold).....	5,589.00
Total.....	9,609.00
Floyd Shock, St. Louis, Mo.:	
Class No. 2 (school).....	3,747.21
Class No. 2.....	1,253.15
Class No. 4.....	1,200.00
Class No. 8.....	2,500.00
Class No. 9.....	2,229.96
Total.....	10,930.32
M. Shoenberg, St. Louis, Mo.:	
Class No. 2.....	3,441.00
J. Hamp Willis, Kingston, Ind. T.:	
Class No. 10.....	320.00
Class No. 17.....	300.00
Total.....	620.00
Watkins National Bank, Lawrence, Kans.:	
Class No. 4.....	600.00
Class No. 5.....	1,566.00
Class No. 8.....	625.00
Total.....	2,791.00
The National Bank of Denison, Denison, Tex.:	
Class No. 26, \$15 (pending) paid.....	
National Trust Company, Denison, Tex.:	
Class No. 2 (school).....	395.63

PAYMENT OF CHICKASAW NATION WARRANTS.

7

RECAPITULATION.

Class No. 2 (school).....	\$10, 194.77
Class No. 2 (general).....	18, 420.28
Class No. 4.....	3, 120.00
Class No. 5.....	4, 692.00
Class No. 8.....	10, 104.15
Class No. 9.....	4, 163.28
Class No. 10.....	34, 338.00
Class No. 11.....	1, 500.00
Class No. 13.....	2, 500.00
Class No. 14.....	6, 400.00
Class No. 16.....	1, 218.50
Class No. 17.....	3, 800.00
Class No. 18.....	5, 589.00
Class No. 19.....	1, 752.35
Class No. 23.....	3, 870.00
	111, 662.33
Warrants pending.....	2, 161.45
Total.....	113, 823.78

STATEMENT IN RE CHICKASAW GENERAL FUND WARRANTS.

Class No. 2.—Warrants heretofore paid by the tribal authorities and recirculated. (See Indian Office letter June 6, 1907, finance, 47311-1907.)

Class No. 4.—E. A. Chapman et al., national and contingent expenses, apparently unauthorized. (See Indian Office letter June 6, 1907, finance, 47315-1907.)

Class No. 5.—Members of the citizenship commission, warrants drawn after passage of the act abolishing same but before the President's approval thereof. (See Indian Office letter June 6, 1907, finance, 47315-1907.)

Class No. 8.—W. B. Burney, townsite records, act not submitted for executive approval. (See Indian Office letter June 6, 1907, finance, 47315-1907.)

Class No. 9.—Z. T. Burton, special counsel, act not submitted for executive approval. (See Indian Office letter June 6, 1907, finance, 47315-1907.)

Class No. 10.—Members of the legislature, designated "extra expense," but presumably for additional salary under an act not approved by the President. (See Indian Office letter June 6, 1907, finance, 47313-1907.)

Class No. 11.—D. H. Johnston, salary of governor, covering increase under an act not approved by the President. (See Indian Office letter June 6, 1907, finance, 47313-1907.)

Class No. 13.—P. S. Moseley, delegate to Washington, no act submitted. (See Indian Office letter July 27, 1907, finance, 51030-64729-1907.)

Class No. 14.—Walter Colbert, coal and asphalt commissioner, information desired as to service rendered and whether already paid by Department. (See Indian Office letter June 6, 1907, finance, 47315-1907.)

Class No. 16.—T. C. Walker, commissioner for delinquent Chickasaws, act not submitted for executive approval. (See Indian Office letter July 31, 1907, finance, 47309-64739-1907.)

Class No. 17.—Arthur Leecraft et al., delegates to Washington, no act submitted. (See Indian Office letter July 31, 1907, finance, 47309-64739-1907.)

Class No. 18, pending.—Mansfield, McMurray & Cornish, attorneys, awaiting further information as to authority and purpose. (See Indian Office letter July 26, 1907, finance, 51027-63982-1907.)

Class No. 19.—B. H. Colbert; bills for repairs and expense collecting tribal tax; act not submitted for executive approval; further information necessary. (See Indian Office letter June 6, 1907, finance, 47315-1907.)

Class No. 22, pending.—Bank of Chickasaw Nation for Chickasaw courts; further information necessary. (See Indian Office letter June 6, 1907, finance, 47315-1907.)

Class No. 23.—Warrants issued to members of Commission for expenses "Conferring with the Choctaw tribal authorities;" act not submitted for executive approval. (See Indian Office letter July 26, 1907, finance, 51047-1907.)

Mr. TAYLOR. Two or three warrants that have been paid could be deducted from that.

Mr. HACKNEY. Take the list there and indicate which ones have been paid. Is that out of the \$113,000, Mr. Taylor?

Mr. TAYLOR. Yes. They are very small amounts. This list contains one warrant for \$5,589, as to which there is no question of validity. It is held on account of suits now pending against the original payee.

Mr. HACKNEY. And who is the holder of the original warrant now?

Mr. TAYLOR. It is held by the State National Bank, of Denison, payable to Mansfield, McMurray & Cornish. This warrant should not be considered in connection with this matter, and the amount should be deducted from the aggregate of \$113,000. Two of the warrants that have since been paid appear here also; one warrant presented by Sam Black, administrator, for \$100.35, and one warrant presented by the National Bank of Denison, Tex., for \$15, on the general fund.

Mr. HACKNEY. In the list that you have submitted the name of the person or bank is indicated in each case, above the description of the warrant?

Mr. TAYLOR. Yes, sir.

Mr. HACKNEY. In this statement you used an arbitrary class number. Just explain that, Mr. Taylor; show what it means in the list.

Mr. TAYLOR. The warrants were issued for various purposes, such as for payment of officers, members of the council, and other expenses, and we segregated them into classes in order to identify the conditions of the different warrants.

Mr. HACKNEY. The classification indicated, then, is simply a matter of an office rule in the Department for convenience in separating and classifying the different warrants?

Mr. TAYLOR. Yes, sir.

Mr. HACKNEY. I believe you said that substantially all of these warrants were presented other than by the original payees?

Mr. TAYLOR. All except probably 5 per cent, and the same are supported by an affidavit from the parties presenting the same.

Mr. HACKNEY. Now state, Mr. Taylor, in obedience to what, if any call, these warrants were submitted to the Indian agent at Muskogee by the holders.

Mr. TAYLOR. The Indian agent at Muskogee received instructions and authority from the Secretary of the Interior to pay all outstanding indebtedness of the Five Civilized Tribes under the act of April 26, 1906.

Mr. HACKNEY. Did you issue a call, then, for the warrants? See if that is a copy of the circular that was sent out [submitting following]:

CHICKASAW WARRANT PAYMENTS.

To holders of Chickasaw national fund warrants:

Section 11 of the act of Congress approved April 26, 1906 (Public No. 129), provides that the Secretary of the Interior shall cause to be paid all tribal warrants which have been regularly issued and are now outstanding, such payments to be made from any fund in the United States Treasury belonging to said tribes, after ascertaining the validity of such warrants.

In compliance with instructions, notice is hereby given that all parties having or holding warrants which have been regularly issued by the Chickasaw Nation and not heretofore paid by the tribal authorities should forward or present the same at the earliest possible date, or before February 15, 1907, to the United States Indian agent

at Union Agency, Muskogee, Ind. T., for examination and payment. Said warrants will, after investigation and examination by proper officer, be forwarded to the Secretary of the Interior at Washington, D. C., for consideration, and when finally approved will be paid by the undersigned.

To facilitate the examination of warrants, they should be accompanied by a list, in duplicate, describing same, and holders should in every instance, if possible, furnish evidence that any warrants presented have not heretofore been paid by the tribal authorities. Any additional information desired will be required upon presentation of particular warrants before payment.

The indorsement of the original payee will be required before a warrant is paid, or if the original payee is deceased the indorsement of the legally appointed administrator or executor of the estate will be required. Powers of attorney will not be recognized.

The present legal holders of the warrants will in all cases be required to receipt for the payment of same over their own signatures.

Receipt for all warrants presented will be given by the Indian agent, and after examination and approval by the Department the same will be paid or holders thereof otherwise notified.

DANA H. KELSEY,
United States Indian Agent.

UNION AGENCY, *January 16, 1907.*

Mr. TAYLOR. Yes. The agent at various times has made payments of outstanding warrants.

Mr. HACKNEY. You mean the Indian agent?

Mr. TAYLOR. Yes, sir.

Mr. HACKNEY. Go on and describe the call, and describe what occurred in obedience to it.

Mr. TAYLOR. This is the general call that was issued on January 16, 1907. Payments prior to that time were only partial payments. As far as the money was available the warrants were taken up in the order in which they were issued, and they were advertised for payment up to and including a certain number and date, for there were not sufficient funds available to pay all outstanding warrants at that time. The payments made by the agent heretofore were only school-fund warrants. The treasurer of the Chickasaw Nation paid the general-fund warrants.

Mr. HACKNEY. I notice in this list submitted by you that you count in class 2 warrants alleged to have been heretofore paid by tribal authorities and recirculated. Do you include under that class school warrants, \$10,194.77, and general fund, \$18,420.28? Payment was refused on these by the Indian agent on the theory that these warrants had once or previously been paid. Is that right, Mr. Taylor?

Mr. TAYLOR. Yes, sir. Upon examination of the records of the Chickasaw Nation and those on file with the assistant treasurer of the United States at St. Louis the fact was disclosed that these warrants had heretofore been paid by the treasurer of the Chickasaw Nation.

Mr. HACKNEY. Was there anything on the face of those warrants indicating that they had been paid?

Mr. TAYLOR. Nothing whatever.

Mr. HACKNEY. There was no stamp and no cancellation mark or mark of obliteration of any kind?

Mr. TAYLOR. None whatever. It was impossible for any person to tell a warrant that had never been paid or one that had been paid by the treasurer of the Chickasaw Nation that was presented to the Indian agent.

Mr. HACKNEY. There was no mark of any character on these warrants showing that after their issuance they had reached the treasurer's office?

Mr. TAYLOR. None whatever.

Mr. HACKNEY. Either for payment or protest?

Mr. TAYLOR. No, sir.

Mr. HACKNEY. Now, the records of the treasurer of the Chickasaw Nation showed that these warrants were not paid?

Mr. TAYLOR. The treasurer's record on investigation showed that the warrants were not paid. The affidavit from the treasurer of the Chickasaw Nation, together with the auditor of public accounts, was to the effect that the warrants were not paid, and were a valid indebtedness against the said nation.

Mr. HACKNEY. What do you mean about that affidavit being made by them, Mr. Taylor? Were such affidavits as those presented by the holders of these warrants?

Mr. TAYLOR. No, sir. In making the payments on these warrants the authorities of the Chickasaw Nation prepared a list of the outstanding warrants. The treasurer made his affidavit that none of these warrants had heretofore been paid.

Mr. HACKNEY. That affidavit that you are speaking about now was made on the taking over of the affairs of the Chickasaw Nation by the Interior Department?

Mr. TAYLOR. No, sir; it was made subsequent to that time, but at the time of such payment as the Indian agent was authorized to make, as he has made several payments of these warrants at various times.

Mr. HACKNEY. I am trying to get the date when these affidavits were made by those officers.

Mr. TAYLOR. They were made at different times. Such an affidavit was attached to each of several lists.

Mr. HACKNEY. Now, are the \$113,000 of warrants you have mentioned here covered in those lists?

Mr. TAYLOR. All of the school-fund warrants were covered in those lists.

Mr. HACKNEY. Were those of Class No. 2 covered?

Mr. TAYLOR. They were all covered by such an affidavit.

Mr. HACKNEY. But you say the general fund, Class No. 2, were not?

Mr. TAYLOR. It was discovered that such irregularities existed before the general fund list was prepared.

Mr. HACKNEY. Now, then, Mr. Taylor, I wish you would state in detail just what evidence you had that any specific or particular warrants had been once presented for payment previously.

Mr. TAYLOR. None whatever; only that after examining the records of the treasurer of the Chickasaw Nation the fact was disclosed that these warrants had been paid heretofore by his records only. It is the law of the Chickasaw Nation for the secretary and the treasurer and the auditor to meet at the end of each quarter and make reports and cancel all paid warrants. This, however, was never done.

Mr. HACKNEY. Now, Mr. Taylor, did you find out where the money was obtained by the Chickasaw authorities for the purpose of paying any of these outstanding warrants previous to your taking hold of the matter?

Mr. TAYLOR. The invested funds and other moneys to the credit of the Chickasaw tribe of Indians with the Treasurer of the United States were deposited to the credit of the treasurer of the Chickasaw Nation semiannually, together with what other revenues were collected and turned in by the treasurer from various sources.

Mr. HACKNEY. Were these deposited in the subtreasury?

Mr. TAYLOR. Yes; by the treasurer of the Chickasaw Nation, subject to his official check. When he drew his official check against this fund, a list of such warrants was attached.

Mr. HACKNEY. Do you know, Mr. Taylor, of the fact of there being a shortage in the St. Louis subtreasury about the time that these warrants should have been handled by the Indian authorities or shortly afterwards—a shortage of some \$61,000 discovered?

Mr. TAYLOR. Yes, sir.

Mr. HACKNEY. Have you had occasion to examine, or have some other official of the Government having the matter in hand examine, the records in the St. Louis subtreasury with respect to the payment of these Chickasaw Nation warrants?

Mr. TAYLOR. Yes, sir. I did it myself.

Mr. HACKNEY. Now, state whether or not you found that the slips which had previously been kept in the St. Louis subtreasury, indicating the number of each particular warrant paid, had been abstracted from the records.

Mr. TAYLOR. I did, in two cases. There was one check, payable to the order of B. H. Colbert, aggregating \$5,000, and one check payable to the order of Kirby Purdom, of approximately \$5,000. The list of warrants of which these checks were in payment was detached from the check itself, and I was informed by the employees of the assistant treasurer that the same thing occurred with other checks on file in that office. The warrants which these checks were issued in payment of could never be ascertained. The records were also destroyed in the treasurer's office of the Chickasaw Nation.

Mr. SHOCK. The corresponding record?

Mr. TAYLOR. Yes; I should use the words "corresponding record."

Mr. HACKNEY. In your investigation of the facts relating to the previous payments or attempts to pay the outstanding warrants by the Chickasaw Nation's authorities in drafts on the St. Louis subtreasury, what did you find was their method of getting the funds with which to pay these warrants? Just state, if you can, what their methods were.

Mr. TAYLOR. You mean by what method the treasurer of the Chickasaw Nation obtained these funds?

Mr. HACKNEY. Yes; from the St. Louis subtreasury.

Mr. TAYLOR. He drew his official check on the subtreasury, and made a schedule of warrants of the number and date and amount drawn, together with an affidavit signed, stating that the warrant of which the check was payment was legally issued and was an outstanding and valid indebtedness against the Chickasaw Nation.

Mr. HACKNEY. But the drafts made by the treasurer of the Chickasaw Nation on the St. Louis subtreasury were never accompanied by the warrants themselves?

Mr. TAYLOR. No, sir.

Mr. HACKNEY. Simply a statement of warrants so-and-so, for so much?

Mr. TAYLOR. Yes. The warrants themselves were retained by the treasurer of the Chickasaw Nation.

Mr. HACKNEY. You could not tell, as a matter of fact, when the treasurer of the Chickasaw Nation drew a particular draft on the St. Louis subtreasury, that he had any of these warrants in his custody, any more than inferring that fact because he had made the draft?

Mr. TAYLOR. That was never ascertained until the accounts of the treasurer of the Chickasaw Nation were figured up afterwards.

Mr. HACKNEY. You could only tell, then, from his records that he pretended to have a particular warrant, but you could not tell in fact whether this particular warrant was in his custody or was outstanding, could you?

Mr. TAYLOR. I found a certain number of Chickasaw warrants that had heretofore been paid by the treasurer of the Chickasaw Nation in the custody of Muldrow & Godwin, partners. I found them in the desk of Mr. Godwin, who was Muldrow's partner. Upon my examination of the warrants, which probably aggregate \$500,000. I found only about 50 per cent of these warrants canceled.

Mr. HACKNEY. Were any of these warrants included in this list of \$113,000?

Mr. TAYLOR. They are not. I proceeded to cancel all such warrants that showed no marks of cancellation, and made a copy of the entire list, which is now on file in the Union Agency, and delivered all of the warrants to Mr. Ward, the former treasurer of the Chickasaw Nation, who had paid these warrants.

Mr. HACKNEY. Now, you obtained access to or custody of the books of Treasurer Ward, did you?

Mr. TAYLOR. Yes, sir; to certain books and papers.

Mr. HACKNEY. Did Mr. Ward's books as treasurer show that any of these warrants, or these warrants of class 2, had been previously paid?

Mr. TAYLOR. Not the class mentioned in this list. I found by Mr. Ward's records that he had himself paid warrants a second time.

Mr. HACKNEY. But his books did not show that any of these warrants that we will call the outstanding warrants now, which you listed here as of class 2, had been paid?

Mr. TAYLOR. Yes, sir; they did show that they had been paid—warrants that were outstanding.

Mr. HACKNEY. What do you mean by that, Mr. Taylor? I want to get your statement clear on that.

Mr. TAYLOR. Mr. Ward's record shows that all warrants shown in class 2 there, now outstanding, had been paid by him.

Mr. HACKNEY. Would his records show the date of alleged payment?

Mr. TAYLOR. Yes, sir.

Mr. HACKNEY. You found some of the warrants had been paid by him twice, did you?

Mr. TAYLOR. Yes, sir. The amount I do not remember.

Mr. HACKNEY. What record did he have of that second payment?

Mr. TAYLOR. A list attached to the checks drawn on the assistant treasurer, and I think from some funds that he had as cash on hand.

Mr. HACKNEY. I surmise his books were not in very excellent condition, then, and were not in very much of a business way?

Mr. TAYLOR. His records were kept very poorly.

Mr. HACKNEY. Would he make a record in his book proper, giving the number of the warrant and the date and the amount paid, or would you have to consult a little slip to find the number?

Mr. TAYLOR. If he kept such a little book, I did not see it. I got my information from his reports to the Chickasaw council, which were made annually, and the list attached to the checks drawn on the assistant treasurer at St. Louis, Mo., and the State National Bank, of Denison, Tex.

Mr. HACKNEY. Then you would find the evidence of that previous payment not in his books, properly speaking, but in his reports that he had made to the council or in the drafts he had made to these other institutions?

Mr. TAYLOR. Yes, sir.

Mr. HACKNEY. So that his papers in his office, kept by him as treasurer, would not disclose the fact of previous payment?

Mr. TAYLOR. If he had a cash book, I never saw it.

Mr. HUMPHREY. He did not keep a book, then, with each item set down?

Mr. TAYLOR. If he had such a book, I did not see it.

Mr. HACKNEY. Then you found no evidence from a book kept in the due course of business, showing these payments?

Mr. TAYLOR. I did not.

Mr. HACKNEY. The only suggestion you had of payment was a mere report he made to the council or to the subtreasurer at St. Louis or the bank that he was drawing on?

Mr. TAYLOR. Yes, sir.

Mr. HACKNEY. And it was on the faith of the facts being true, as shown in his report to the council and to the bank and the subtreasury, that you classified these warrants here under class No. 2 after they were presented?

Mr. TAYLOR. Yes, sir. I can state how I arrive at that.

Mr. HACKNEY. I guess you have probably covered the matter, unless you have a further statement. If there is any additional point that you would like to suggest there, we will be glad to have it stated.

Mr. TAYLOR. The records of the Chickasaw Nation, the main book, you know, could not be found. I obtained all of their stub books and prepared a list of every warrant that had been issued by the Chickasaw Nation, and made a memorandum of such warrants as were canceled, and then I took a list of every warrant that had been paid by his official check on St. Louis or any other place, and I checked those warrants as paid off of that list, and in doing that I would find those duplicate payments.

Mr. HACKNEY. State whether or not the Government also paid some Chickasaw warrants twice.

Mr. TAYLOR. In making this examination, after the examination of the records of the Chickasaw Nation, I found that certain warrants had been heretofore paid by the treasurer of the Chickasaw Nation. I reexamined the records of the Indian agent's office for payments made by him heretofore of Chickasaw warrants, and it was shown that the Indian agent had heretofore paid \$1,600 worth of school warrants that had previously been paid by the treasurer of the

Chickasaw Nation and recirculated and presented to the agent for payment.

Mr. HACKNEY. The fact of the matter is that the records of almost every character of the Chickasaw Nation officers were very poorly kept?

Mr. TAYLOR. Yes, sir.

Mr. HACKNEY. That would apply to the auditor's office, I presume, as well as the treasurer's office?

Mr. TAYLOR. Yes; the auditor's office, as well as the treasurer's. It was generally the custom of the officers to keep the records at their residences, and it was seldom that one officer ever turned his records over to the man that succeeded him in office.

Mr. HACKNEY. State what was done by the Federal authorities after you found that moneys had been drawn by the treasurer of the Chickasaw Nation from the St. Louis subtreasury, with which to pay any of these warrants, and for which the warrants themselves were not taken in and canceled or kept in the custody of the treasurer.

Mr. TAYLOR. The matter was all placed before the United States grand jury, then in session at Ardmore, Ind. T., and the grand jury found indictments against Kirby Purdom, president of the Bank of the Chickasaw Nation; B. H. Colbert, then the United States marshal for the southern district of Indian Territory, and William T. Ward, the treasurer of the Chickasaw Nation.

Mr. HACKNEY. Those indictments are still pending?

Mr. TAYLOR. Yes, in connection with the payment and recirculation of Chickasaw Nation school warrants.

Mr. HACKNEY. In the list you have submitted I notice, under class 22, a warrant for \$2,046.10, opposite which you have written the word "pending," this warrant having been presented by the Joplin National Bank, of Joplin, Mo. Just explain if there was any objection to the payment by the Indian agent of that warrant, or why it has not been paid.

Mr. TAYLOR. The warrant was drawn in favor of the Bank of the Chickasaw Nation. It seemed to have been issued regularly in every manner for court expenses and the payment of certain scrip. The Department requested an affidavit from the proper authorities of the Chickasaw Nation that the court scrip for which this warrant was issued had been duly canceled. Up to the present time the party presenting the warrant for payment had not furnished such an affidavit.

Mr. HACKNEY. And you do not know whether in fact the court scrip was or was not canceled?

Mr. TAYLOR. No, sir; I do not, and it was never investigated by the Indian agent.

Mr. HUMPHREY. As I understand from your statement, \$113,708.43 are outstanding warrants of the Chickasaw Nation?

Mr. TAYLOR. Yes, sir.

Mr. HUMPHREY. Of this class, class No. 18 is a warrant to Mansfield, McMurray & Cornish for \$5,589?

Mr. TAYLOR. Yes, sir.

Mr. HUMPHREY. Also warrant payable to the Bank of the Chickasaw Nation, class No. 22, for \$2,046.10?

Mr. TAYLOR. Yes, sir.

Mr. HUMPHREY. Which is owned at this time by the Joplin National Bank, of Joplin, Mo., and has been held up awaiting an affidavit that the original warrant for which this warrant was issued for court expenses has been canceled?

Mr. TAYLOR. Yes, sir. There are also two warrants approved and paid that do not appear on that list, subsequent to the time the list was prepared.

Mr. HUMPHREY. That makes a total of \$7,635.10 on warrants considered valid, but upon which payment has been suspended?

Mr. TAYLOR. Yes, sir.

Mr. HUMPHREY. Now, as I understand, of class 10 of the legislative warrants, there are warrants amounting to \$772 of the original warrants still owned by the original payee, Mr. McDuffee?

Mr. TAYLOR. There have been warrants presented by E. H. McDuffee, of Woodville, Okla., to the Indian agent for payment aggregating \$772.

Mr. HUMPHREY. Class 13 of unpaid warrants, amounting to \$2,500, are, as I understand, the warrants that are held by Mr. Mosely as a delegate, and payment refused because he never performed the service?

Mr. TAYLOR. Yes; E. S. Mosely, of Wapanucka, presented warrants to the Indian agent for payment aggregating \$2,500.

Mr. HACKNEY. In that connection let him just state the fact whether or not Mosely ever attended as delegate. Did Mosely in fact attend to the duties of a delegate, or did he remain at home?

Mr. TAYLOR. From the best information I could obtain and was told by Governor Johnston, of the Chickasaw Nation, E. S. Mosely did not render any service for which the warrants mentioned were issued.

Mr. HACKNEY. In that connection did the other delegates appointed for similar services in fact attend to their duties in Washington?

Mr. TAYLOR. I was told by Governor Johnston that they had.

Mr. HACKNEY. Who were they?

Mr. TAYLOR. E. B. Johnson, of Norman, and A. N. Leecraft, of Colbert, Okla.

Mr. HUMPHREY. Class 17, of warrants still in the hands of original payees, amounts to \$3,800?

Mr. TAYLOR. I do not know the aggregate amount of warrants presented by the original payees at the present time.

Mr. HUMPHREY. Approximately, then, Mr. Taylor, there are \$100,000 of outstanding Chickasaw warrants presented to the Indian agent for payment and owned by various banks, estates, trust companies, and private individuals other than the original payees?

Mr. TAYLOR. I suppose the amount presented for payment by the original payees would probably amount to about 5 per cent of the total amount.

Mr. HUMPHREY. That would make, then, about \$100,000 of outstanding warrants?

Mr. TAYLOR. I could not tell the exact figures.

Mr. HUMPHREY. The total outstanding is \$113,000.

Mr. TAYLOR. Yes, but there has been some reduction of amounts paid on warrants withheld for other reasons.

Mr. HUMPHREY. Of these outstanding warrants in the hands of third parties, will you explain to the committee what classes were

refused payment because the acts were not approved by the President?

Mr. TAYLOR. It is shown by the list, a copy of which has already been submitted.

Mr. HUMPHREY. Mr. Taylor, of these \$100,000 outstanding and in the hands of innocent purchasers, your investigation shows but \$28,615.05 were what were called recirculated warrants—those warrants once paid and then sold to innocent purchasers?

Mr. TAYLOR. Of the \$100,000 presented for payment, it was shown by investigation that the amount of warrants from the school funds, aggregating \$10,194.77, and general fund, aggregating \$18,420.28, had heretofore been paid by the treasurer of the Chickasaw Nation.

Mr. HUMPHREY. Your investigation, then, shows that outside of these warrants, all the other warrants have never been paid?

Mr. TAYLOR. Not so far as I can find out, as there were two checks drawn on the assistant treasurer at St. Louis, aggregating \$11,000, and the warrants which these checks paid were never located.

Mr. HUMPHREY. The slip was torn off?

Mr. TAYLOR. Detached.

Mr. HUMPHREY. What officers of the Chickasaw Nation had access in the subtreasury to these warrants, to the checks of the treasurer, with the slips showing the warrants paid?

Mr. TAYLOR. None, without the permission of the assistant treasurer himself.

Mr. HUMPHREY. Did anybody have permission from the assistant treasurer?

Mr. TAYLOR. None that I know of.

Mr. HACKNEY. Please state, Mr. Taylor, whether or not the refusal of the Secretary of the Interior to authorize the payment of these warrants classified as class No. 2 was based on the contention that if the money had been appropriated for their payment and the warrant had been in fact turned in, but put into circulation again and lodged in the hands of innocent purchasers, would constitute such a demand as he was authorized to pay under the act of Congress of April 26, 1906.

Mr. TAYLOR. Money appropriated by whom?

Mr. HACKNEY. Well, drawn out by the treasurer of the Chickasaw Nation to pay these warrants. That is what I mean by "appropriated," drawn from the subtreasury. State whether or not his position was that he would not be authorized to pay these warrants without additional legislation.

Mr. TAYLOR. The Secretary of the Interior would not issue authority to the Indian agent to pay this class of warrants. Therefore the Indian agent did not consider the payment of this class of warrants.

Mr. HACKNEY. In short, then, the position of the Indian office at Muskogee is that without additional legislation the agent has not authority to pay these outstanding warrants that you have mentioned, excepting particular ones that you say they are awaiting additional testimony or additional investigation?

Mr. TAYLOR. The Indian agent could not consider the payment of those warrants without the authority of the Secretary of the Interior.

Mr. HACKNEY. Will you state, Mr. Taylor, if you have before you the official report made by the Indian agent at Muskogee to the Commissioner of Indian Affairs on these warrants listed as class 2?

Mr. TAYLOR. Yes, sir.

Mr. HACKNEY. This is the report you have before you?

Mr. TAYLOR. Yes.

Mr. HACKNEY. You will file that here?

Mr. TAYLOR. Yes.

Mr. HACKNEY. The following is filed:

MUSKOGEE, IND. T., May 11, 1907.

The COMMISSIONER OF INDIAN AFFAIRS.

SIR: Referring to departmental instructions of January 11, 1907 (I. T. D. 286-1907), and my general report of February 21, 1907, I have the honor to submit the following separate report with reference to certain Chickasaw national fund warrants:

"Class No. 2.—This list aggregates \$18,420.28 of national fund warrants, and as the same question is involved with reference to certain school warrants which have heretofore been presented to this office and payment withheld by direction of the Department, a separate list covering school warrants aggregating \$10,194.77 is also inclosed, all of which warrants have once been paid by the tribal authorities and fraudulently recirculated, which matter has heretofore been reported to the Department and been the subject of various investigations."

Many of these warrants were issued for the regular incidental expenses of the tribal government. Some, however, come within the various classes separately mentioned in my report of February 21, but in view of the fact that all have been once paid by the tribe the question of their irregularity of issuance in the first place is now immaterial. The only question that arises at all is that of the liability of the nation to the present holders, providing they are the innocent purchasers for value, which I believe is claimed in every case.

As the Department is advised, it is alleged these warrants were recirculated through the fraudulent acts of the parties connected with the Bank of the Chickasaw Nation, which subsequently failed, and the cashier of which, Mr. Kirby Purdom, I understand is now a fugitive from justice.

As stated above, the total of these warrants fraudulently recirculated that have been presented to this time, both school and general, is \$28,615.05. It is thought, however, there are some other warrants in the hands of persons who may fear to present them which are in exactly the same condition. Much publicity has been given to the fact that these warrants have been called in, and if the Department is to consider their payment, I think, if it is not believed ample time has been given by the notices heretofore issued, that a date should be fixed after which no more of these recirculated warrants would be considered under any circumstances, even if it is necessary to fix this date by Congressional legislation.

As to the warrants already presented, I am of the opinion that the nation is liable to the innocent purchasers for the amount thereof. I would not, however, recommend that they be paid simply by order of the Department, but I believe that the entire matter should be presented to Congress, with a legal opinion as to the rights of the present holders, with appropriate recommendation. Or, if thought advisable by the Department, the matter might be presented to the next session of the Chickasaw legislature, and if they desire to pass an act specifically appropriating a necessary sum to retire these warrants, which act, if approved by the President of the United States, would undoubtedly be ample authority for their payment.

In connection with these warrants, I respectfully refer to my separate report of this date, covering a large number of warrants, irregular in their issuance, which are practically in the same condition, except that they were not fraudulently recirculated. I do not believe that any of the warrants should be paid until proper proof is submitted that the present holders are the innocent purchasers, but this is a detail that can be determined before payment is made in case payment is authorized. No acts can now be passed by the Chickasaw legislature without the approval of the President of the United States, and no warrants are issued and circulated by that nation, but instead are approved by a Government officer and paid under direction of the Department, so there will be no repetition of this condition. I can not but believe the nation is liable for the acts of its officer, although by such acts it may have been defrauded out of large sums, which seems to be the case in this instance, and I further believe, if these warrants are held to be valid claims against the nation, that in many of the instances where it is doubtful if the nation received the value for which the warrant was issued, suit should be instituted against the persons who receive the benefit of these warrants to recover the amounts improperly paid by the nation.

With reference to the attitude of the present holders of these warrants, I beg to invite particular attention to the inclosed letter from Mr. Floyd Shock, of St. Louis, Mo., wherein he explains the precaution he took to determine the validity of such warrants before they were purchased by him and his associates. This is a good sample of many letters received upon this subject.

Action upon the various warrants now submitted will practically close the financial affairs of the Chickasaw Nation prior to January 1, 1907, with the exception of a few warrants which will be reported from time to time as soon as further investigation can be made. Some of the persons holding these warrants have had them for a number of years, and, as the warrants draw no interest, they are constantly clamoring for their money, particularly since the passage of the act of April 26, 1906, authorizing the Department to settle these old affairs, and I therefore recommend that the matter be given as early consideration as the circumstances warrant.

Very respectfully,

DANA H. KELSEY,
United States Indian Agent.

I concur in the above and foregoing report.

JAMES P. FOSTER, *Special Agent.*

[Inclosure.]

Union Agency, Muskogee, Ind. T., May 11, 1907. Dana H. Kelsey, United States Indian agent. Reports in re certain Chickasaw national fund and school warrants listed as class No. 2. To agent June 5, 1907.

MUSKOGEE, IND. T., May 15, 1907.

Respectfully forwarded. Inasmuch as these warrants have been once paid by the Chickasaw Nation and recirculated, it would seem clear that they are not "lawful claims" or warrants "regularly issued" and which is the only class of indebtedness which the Department under section 11 of the act of Congress approved April 26, 1906, is authorized to pay.

The matter of reissuance of these warrants was investigated by Inspector Jenkins and by the Department of Justice, resulting in indictments against several parties, including one Mr. Purdum, who it is understood was largely instrumental in fraudulently reissuing these warrants, and who is now a fugitive from justice.

Under all circumstances I suggest the holders of these warrants be informed that the Department is not authorized to pay same, and that they should present their claims for the consideration of Congress, and that instructions be given as to whether or not these warrants should be returned to the parties who have presented them for payment.

J. G. WRIGHT, *Inspector.*

Mr. TAYLOR. Indorsed on that is the report of J. G. Wright, the inspector.

Mr. HACKNEY. I will ask you now, Mr. Taylor, if you have before you the report of the Indian agent at Muskogee on classes 4, 5, 8, 9, 14, 19, and 22?

Mr. TAYLOR. Yes, sir.

Mr. HACKNEY. This is the report you now present, is it?

Mr. TAYLOR. Yes, sir.

Mr. HACKNEY. It has also indorsed thereon the inspector's report of May 15, 1907?

Mr. TAYLOR. Yes, sir.

Mr. HACKNEY. Now I will read from the report, which is quite voluminous, the recommendations of the agent at the close [reads]:

The same general question arises concerning all of the warrants in the different classes mentioned herein, namely, the liability of the nation to innocent purchasers for value. These warrants are presented by probably forty or fifty different banks and individuals throughout the country, and I have received affidavits from most of them stating that they are the legal owners for value without any information or knowledge as to the irregularity of issuance of said warrants.

Referring to my separate report with reference to the class of warrants designated as No. 2, which have once been paid by the tribal authorities and again recirculated, I believe that the warrants described in the list inclosed herewith should be handled in the same manner. If proof upon some form or under such rules as may be approved by

the Department is furnished by the holders of these warrants, showing that they are the innocent purchasers, I believe that the nation is liable and should pay the amount indicated, and I recommend that after a consideration of the question of the liability of the nation, if it is so held, that instructions be given accordingly.

Respectfully,

DANA H. KELSEY,
United States Indian Agent.

Mr. HACKNEY. The paper that I now have here presented by you is the report of the Indian agent at Muskogee, dated May 11, 1907, on pages 10 and 11?

Mr. TAYLOR. Yes, sir.

Mr. HACKNEY. I will put in the record the report of the Indian agent under date of May 11, 1907, as follows:

MUSKOGEE, IND. T., May 11, 1907.

The COMMISSIONER OF INDIAN AFFAIRS.

Sir: Referring to departmental instructions of January 11, 1907 (I. T. D. 286-1907), and my general report of February 21, 1907, I have the honor to submit the following separate report with reference to certain Chickasaw national-fund warrants:

Class No. 16.—This list covers warrants aggregating \$34,338, issued to members of the legislature for salary in excess of that originally authorized, and other warrants in favor of the members of the legislature for "extra expense," making a total of \$10 per day for each member. The warrants issued at the rate \$6 per diem cover the regular \$4 per diem as originally provided and an expense of \$2 as authorized by the act approved November 7, 1902, (copy submitted).

Governor Johnston refers to the provision of the constitution of the Chickasaw Nation which authorizes an increase in the compensation of members of the legislature provided that no increase shall take effect during the session in which such increase shall have been made (see page 9, Chickasaw laws), and since the passage of the act mentioned above the members of the legislature have been paid at the rate of \$6 per diem such warrants as have been issued, except those now presented, having been paid by the tribal authorities. Later, by a subsequent act passed November 1, 1905 (copy inclosed), the legislature attempted to raise its own salary at that particular session by providing for an extra expense of \$4 per diem. Governor Johnston informed me he did not think this act was proper, and it received his veto, but that the legislature passed the same over his head. Some of the warrants covered by the list inclosed are for this extra expense, and some, I understand, have been paid by the nation.

The question of the payment of a number of this same class of warrants has heretofore been before the Department, and I respectfully refer to the opinion of the Assistant Attorney-General for the Department, dated April 24, 1906 (I. T. D. 3369-1906), in which opinion it is held that an act increasing the pay of members of the legislature requires the approval of the President. This opinion was rendered in connection with a claim of the State National Bank, of Denison, Tex., which held a number of these warrants. This claim was afterwards recognized by Congress and ordered paid by the Indian appropriation act approved June 21, 1906 (page 22, Public, 258). This payment, I understand, included warrants also issued for increase of pay, similar to those now presented, and it would seem established a precedent as to the payment of this class.

Now that no act of the Chickasaw legislature can be passed without the approval of the President and no warrants are issued, circulated, and paid by the tribal authorities, no further difficulty concerning this matter will be had, and the question that now arises is whether or not the warrants now outstanding should be paid. Not only the matter of the precedent which it seems has already been established must be considered, but also the same general question as to the liability of the nation for warrants which have passed into the hands of innocent purchasers for value. While these warrants should not have been issued in the first place without the act having been approved by the President of the United States, still they have been issued, practically all of them have been sold, and I believe, under all the circumstances, the nation is liable.

Referring to my separate report of this date covering the recirculated warrants, I recommend, after the matter has been carefully considered, that the same steps be taken concerning this class, the only exception to the general rule being, inasmuch as the legislative warrants involve so many individuals, if one individual member of the legislature is allowed to draw his pay simply because he was fortunate enough to sell his warrant before it was presented, it would hardly seem fair not to pay all of them.

In any event I doubt if there will be more than three or four cases where the warrants have not passed into the hands of innocent purchasers.

Class No. 11.—The two warrants in this class aggregate \$1,500 and cover the salary of the governor at the rate of \$3,000 per annum, while the original law only authorized \$1,500. This increase in salary is occasioned by an act of the legislature, copy inclosed, which was passed at one session and during the term of Governor Moesely, to take effect the coming year and with the change of administration.

The warrants mentioned above are in practically the same condition as those of Class No. 10. They were presented by the State National Bank of Denison, Tex., which bank furnishes evidence in the form of an affidavit to the effect that it owns said warrants for a valuable consideration.

The same question as to the liability of the nation against an innocent purchaser arises in this case, and I believe they should be handled in the same manner as the recirculated warrants mentioned above.

Respectfully,

DANA H. KELSEY,
United States Indian Agent.

I concur in the above and foregoing report.

JAMES P. FOSTER, *Special Agent.*

Mr. HACKNEY. You have before you also the report of the Indian agent at Muskogee on classes 16 and 17, have you?

Mr. TAYLOR. Yes, sir.

Mr. HACKNEY. This is the report I have, which I will put in the record:

MUSKOGEE, IND. T., May 11, 1907.

THE COMMISSIONER OF INDIAN AFFAIRS.

Sir: Referring to departmental instructions of January 11, 1907 (I. T. D. 206-1907), and my general report of February 21, 1907, I have the honor to submit the following separate report with reference to certain Chickasaw national-fund warrants:

Class No. 16.—This list covers three warrants aggregating \$1,218.50, issued in favor of T. C. Walker, as commissioner for delinquent Chickasaws, under the act of the national legislature approved November 19, 1904, copy inclosed.

A part of the warrants issued under this act seem to have been paid by the tribal authorities. The others are now presented, and the three covered by the above list are all that have been issued under the act and remaining unpaid. These are in the hands of banks that have purchased them from the original payee.

From the information I have been able to procure it seems that Mr. Walker has rendered the services required by the act, and the only question that arises is whether the act should have been submitted to the Department for the approval of the President of the United States. Under the circumstances I believe that the warrants should be paid, and I respectfully so recommend.

Class No. 17.—These warrants aggregate \$3,800, and were issued in favor of Arthur Leecraft et al., delegates to Washington under an act, copy of which is inclosed.

Governor Johnston advises me that the delegates were regularly appointed and rendered the service for which these warrants were issued.

These warrants seem to be in exactly the same condition as those mentioned above in favor of Mr. Walker, the only question being that the act should have been submitted for the approval of the President.

Under the circumstances and as no further service of this character can now be rendered without the approval of the Department, I believe that the warrants should be paid, and so recommend.

Very respectfully,

DANA H. KELSEY,
United States Indian Agent.

I concur in the above and foregoing report.

JAMES P. FOSTER, *Special Agent.*

Mr. HACKNEY. Now, I will ask you, Mr. Taylor, if this report which you now hand me, bearing date May 29, 1907, is the report of the Indian agent at Muskogee on classes 23, 24, and 25?

Mr. TAYLOR. Yes, sir.

Mr. HACKNEY. I offer the report on class 23, classes 24 and 25 not being involved in this inquiry:

MUSKOGEE, IND. T., May 29, 1907.

THE COMMISSIONER OF INDIAN AFFAIRS.

Sir: Referring further to Department instructions of January 11, 1907 (I. T. D. 286-1907), and to my general report of February 21, 1907, I have the honor to submit the following additional report with reference to certain Chickasaw national fund warrants:

These warrants were not listed or classified in my general report mentioned above, but have been presented since that time and are now given new class numbers to distinguish them as indicated:

"Class No. 23.—This list aggregated \$3,870 and covers warrants issued to members of a commission to visit and confer with the Choctaw tribal authorities in the matter of the final settlement of the affairs of the two nations, the expense of such commission being authorized by act of national legislature approved November 19, 1904."

These warrants have been presented by the National Bank of Commerce of St. Louis, Mo., this bank having purchased the same from the original payees. Governor Johnston advises me that the delegates were regularly appointed and rendered services for which these warrants were issued. The act does not appear to have been submitted to the President of the United States for approval. The only question would, therefore, seem to be as to whether or not it should have been so submitted. Under the circumstances, and as no further services of this character can now be rendered without the approval of the Department, I believe the warrants should be paid and so recommend.

"Class No. 24.—This list is composed of three warrants aggregating \$177 for expense of the national legislature in 1900. They seem to be regularly issued; and as I believe them to be for necessary expenses of the tribal government, I respectfully recommend that the warrants be paid.

"Class No. 25.—This is warrant No. 449, dated February 16, 1901, for \$100.35 for expenses incurred by the tribal authorities while assisting in the removal of intruders in connection with tribal tax, as authorized by act approved on September 14, 1899."

The warrant is now in the hands of Mr. Sam Black, executor, of Marietta, Ind. T., and as it appears to have been regularly issued for necessary expense of the tribal government I would respectfully recommend that it be paid.

"Class No. 1-C.—This is a warrant for services as constable, and if it had been presented at an earlier date it would have been included in class 1 of good and regular warrants. It is therefore recommended that it be now paid."

Very respectfully,

DANA H. KELSEY,
United States Indian Agent.

I concur in the above and foregoing report.

JAMES P. FOSTER, *Special Agent.*

Mr. TAYLOR. You asked me a while ago what was the aggregate amount of these outstanding warrants. I have figured it up, and I find it to be \$108,119.43. This includes the warrants in the hands of the original payees.

Mr. HACKNEY. Mr. Taylor, state whether or not any of these warrants that have been submitted to the agency there for payment have been retained by the agent, under instructions from the Department of the Interior.

Mr. TAYLOR. Yes, sir. All of the warrants have been retained by him, with the exception of a few school warrants aggregating approximately \$2,000, which were presented by Mr. Shock and were used as evidence before the grand jury in securing indictments, and were returned to Mr. Shock by the United States attorney for the southern district of the Indian Territory.

Mr. SHOCK. The exact amount was \$3,747.21.

Mr. TAYLOR. Yes; and one general-fund warrant to D. McCoy amounting to \$166.35.

Mr. HACKNEY. Then, if these warrants are paid in accordance with any provision that may be made to that end, there is no danger of their getting out again? They can be canceled by the agent, and this will be the final payment?

Mr. TAYLOR. All warrants that have ever been paid by the United States Government have been sent to Washington and are now on file in the Treasury Department, and there is no possibility of their ever being recirculated.

Mr. HACKNEY. The warrants that you hold there now and which have not been paid, and which are submitted by the several holders for payment, are those which the Indian agent declined to pay for the reasons you have given, but held the warrants under instructions?

Mr. TAYLOR. Yes, sir; to prevent further circulation and complication.

STATEMENT OF MR. FLOYD SHOCK, OF ST. LOUIS, MO.

Mr. HACKNEY. Your name is Floyd Shock?

Mr. SHOCK. Yes, sir.

Mr. HACKNEY. You reside in St. Louis, Mo.?

Mr. SHOCK. Yes, sir.

Mr. HACKNEY. What is your business, in a general way?

Mr. SHOCK. I am vice-president of the bank. I am representative of the Mechanics' National Bank, and am a dealer in county warrants of the State of Texas, or rather an investor.

Mr. HACKNEY. Do you hold some of these Chickasaw warrants?

Mr. SHOCK. Yes, sir.

Mr. HACKNEY. How much?

Mr. SHOCK. Of the school fund, \$3,747.21, and I hold of the general fund, \$7,183.11.

Mr. HACKNEY. State if you hold the warrants aggregating \$10,920.32, described and classified in the list submitted by Mr. Taylor.

Mr. SHOCK. I do.

Mr. HACKNEY. Now, state if you have in your hand memoranda showing the date and amount of warrants purchased by you.

Mr. SHOCK. I have.

Mr. HACKNEY. From whom did you purchase these warrants?

Mr. SHOCK. From the Bank of the Chickasaw Nation, or from Mr. Kirby Purdom, president.

Mr. HACKNEY. At the time of purchasing the several warrants, what precautions, if any, did you take toward ascertaining whether or not they were valid and subsisting and unpaid obligations of the Chickasaw Nation?

Mr. SHOCK. By requiring a certificate from the treasurer of the nation to the effect that he had examined each warrant and that it had not been paid by him; that the nation was not in funds at that date to pay the warrants; that it was in due form; was a valid outstanding indebtedness against the nation for face value, to be paid when funds for that purpose were in his hands. In addition to that we sought the certificate of the auditor.

Mr. HACKNEY. You say you sought a statement from the auditor?

Mr. SHOCK. Yes; that they were regularly issued and in due form, and so forth. In some instances this certificate was signed by an official of the nation, called the expert accountant. In other instances it was signed by the auditor of the nation.

Mr. HACKNEY. This large bundle of papers which you now have before you [indicating] contains the number, the date, the name of the payee, and the amount of each warrant, and contains the certificates of the officers you mentioned for all of these warrants?

Mr. SHOCK. It does.

Mr. HACKNEY. I will read from one of them, taking it from the first list here. [Reads:]

Warrants.

No.	Date.	Payee.	Amount.
960	Apr. 30, 1903	Z. T. Burton.....	\$416.66
2386	June 30, 1902	W. H. Jackson.....	1,000.00
2385do.....do.....	1,000.00

I, T. B. McLish, expert accountant for the Chickasaw Nation, hereby certify that I have examined the warrants mentioned in the above list, and the same are in due form, issued according to law, duly recorded, and properly signed up.

In witness whereof I affix my signature this the 30th day of April, 1903.

F. B. McLISH,
Expert Accountant, Chickasaw Nation.

I, W. T. Ward, treasurer of the Chickasaw Nation, hereby certify that I have examined the warrants as per above list and hereby certify that none of the above warrants have been paid by me, and that the Chickasaw Nation at this date are not in funds to pay said warrants, but that the said warrants are in due form and are valid outstanding indebtedness against the Chickasaw Nation for their face value, to be paid when funds for that purpose are in my hands.

In testimony whereof I affix my signature this the 30th day of April, 1903.

WM. T. WARD,
Treasurer Chickasaw Nation.

Mr. HACKNEY. State if the other certificates which you have before you are signed by the expert accountant and by the treasurer, where they purport to be given by those officers; whether they contain the genuine signatures.

Mr. SHOCK. They do, to the best of my knowledge and belief.

Mr. HACKNEY. You say in some instances you obtained the certificate from the auditor instead of the expert accountant?

Mr. SHOCK. Yes; I have.

Mr. HACKNEY. The auditor's certificate is in the following form [reads]:

I, E. A. Chapman, auditor for the Chickasaw Nation, hereby certify that I have examined the warrants mentioned in the above list, and the same are in due form, issued according to law, duly recorded and properly signed, and are subsisting, legal, unpaid claims against the Chickasaw Nation.

In witness whereof I have affixed my signature this 22d day of May, 1904.

E. A. CHAPMAN,
Auditor Chickasaw Nation.

Annexed to that is the certificate of the treasurer in the form given in the other case. Now, state whether or not you had the certificates from other auditors than Chapman when they were in office.

Mr. SHOCK. I can not recall any now. It was my purpose and endeavor to have the proper official of the Chickasaw Nation certify that the warrants offered were valid.

Mr. HACKNEY. You obtained a certificate of this character in every case where you bought a warrant in substantially the above form?

Mr. SHOCK. Yes; in every case where I purchased any of these warrants.

Mr. HACKNEY. You may now state the extent of dealings that you had in the Chickasaw warrants. About what was the volume of the purchases you made?

Mr. SHOCK. In the original lot purchased, as above stated, the amount was something like \$86,000, and subsequently I purchased between \$40,000 and \$50,000 of a bank at Sulphur, Ind. T.

Mr. HACKNEY. Were any of them these disputed warrants?

Mr. SHOCK. All of the latter were paid, and of the original purchase of \$86,000, \$75,000 has been paid.

Mr. HACKNEY. Then in every instance where you made a purchase you required a certificate as to the validity of the warrants?

Mr. SHOCK. I did.

Mr. HACKNEY. Did you in any case where you made a purchase have any knowledge that you were purchasing a warrant that would be called in question?

Mr. SHOCK. I did not. I should not have purchased it under any circumstances had I had the least suspicion that there was anything illegal connected with its issuance or circulation.

Mr. HACKNEY. You paid your good money for all the warrants you got, did you, Mr. Shock?

Mr. SHOCK. Yes. In some instances I paid as high as 92 cents, as I now remember, and of the original \$86,000, as I now remember, the cost was 80 cents, possibly 81.

Mr. HACKNEY. That was paid by you at the time of purchasing the warrants?

Mr. SHOCK. Yes, sir.

Mr. HACKNEY. The warrants were delivered to you at the time of the purchase, were they?

Mr. SHOCK. Yes; and I hold drafts in my hand covering that amount paid for the warrants.

Mr. HACKNEY. This bunch of drafts [indicating] which you hand me covers drafts drawn in purchasing these warrants, does it, Mr. Shock?

Mr. SHOCK. They do.

Mr. HACKNEY. And these drafts were all paid by the party on which they were drawn?

Mr. SHOCK. Yes, sir. Of the original purchase of \$86,000 there was one lot of \$10,000 purchased of the City Loan and Trust Company of Gainesville, Tex.

Mr. HACKNEY. What period of time was covered by the various purchases of the Chickasaw Nation warrants which you have mentioned? I mean covered by your transactions in making the purchases?

Mr. SHOCK. As I remember, they began about the middle of April, 1903, and ended some time in July, 1903, the original agreement being to purchase \$100,000 worth of these warrants; but something occurring in the correspondence or conduct of the bank indicated a lack of integrity, and the purchases were stopped.

Mr. HACKNEY. You mean you stopped purchasing as soon as you—

Mr. SHOCK. As soon as we discovered that something did not seem right and straight about it.

Mr. HACKNEY. This batch of warrants, then, which is unpaid, amounting to \$10,930.32, face value, was purchased by you with no

indication of irregularity, even in the bank's transaction in dealing with you?

Mr. SHOCK. They were.

Mr. HACKNEY. And they were all bought by you in good faith, without any knowledge of any character of anything that caused you to suspect any irregularity or impropriety of their issue or circulation?

Mr. SHOCK. They were, in every instance.

Mr. HACKNEY. The warrants were all indorsed, were they not, by the original payees?

Mr. SHOCK. As far as I was able to determine; but I observed in some of them a similarity in the handwriting, and they were returned and insistence made that they be indorsed by the original payee, if they had not before been. I think that was the actual circumstance that caused our declining to take more of them. There seemed to be a similarity in the indorsements.

Mr. HACKNEY. Did you take any more of these warrants after that? Were they returned to you?

Mr. SHOCK. They were returned to us with seemingly proper indorsements, and we purchased none after that time. I mean I purchased none of this original \$86,000 worth. I afterwards bought from a bank which I knew to be reliable.

Mr. HACKNEY. When did you first learn that there was any controversy as to the validity of this \$10,930 of warrants?

Mr. SHOCK. I first definitely ascertained that from conversation had with the Indian agent.

Mr. HACKNEY. Who?

Mr. SHOCK. Dana H. Kelsey, or employees under him.

Mr. HACKNEY. Give your best recollection as to the time.

Mr. SHOCK. At the time they declined to pay them.

Mr. HACKNEY. When was that—in the year 1906?

Mr. SHOCK. Yes. But I had heard rumors indicating that there was probably \$15,000 of fraudulent or recirculated warrants possibly a year previous to that, but I had no knowledge that I held any of them.

Mr. HACKNEY. Did you purchase any Chickasaw Nation warrants after you first heard this rumor that there were some recirculated warrants outstanding?

Mr. SHOCK. None of the original purchase of \$86,000. I purchased probably \$40,000 or \$50,000 worth of the First National Bank at Sulphur some time after I had heard these rumors, but I felt absolute confidence in the people from whom I purchased and in their regularity, and all these purchases were subsequently paid without question.

Mr. HACKNEY. That bunch you bought from them were paid?

Mr. SHOCK. Yes, sir.

Mr. HACKNEY. So that there is none of these warrants that you now hold that was purchased by you after the rumor got out that there was any irregularity in the issuance of Chickasaw Nation warrants?

Mr. SHOCK. None that I had purchased except those purchased from the bank of Sulphur, which were subsequently paid.

Mr. HACKNEY. By the Indian agent, I suppose?

Mr. SHOCK. Yes, sir.

Mr. HACKNEY. In addition to the certificates you obtained from the Chickasaw Nation authorities, I will ask you if you had the question of the validity of these warrants examined and obtained the opinion of an attorney?

Mr. SHOCK. Before we invested any money in the purchase of Chickasaw warrants—

Mr. HACKNEY. Whom do you mean by "we?"

Mr. SHOCK. At the time of the original purchase a gentleman named R. M. Hubbard, director, and H. P. Hilliard, vice-president, of the Merchants' National Bank at St. Louis, were interested in that, and for convenience I represented the parties interested.

Mr. HACKNEY. Was Mr. Hubbard interested?

Mr. SHOCK. Yes; and Mr. Hilliard. At the time of the original contemplated purchase, and before engaging in it, we obtained from Judge Seldon P. Spencer, of St. Louis, his opinion as to the validity of such warrants.

Mr. HACKNEY. State now whether Judge Seldon P. Spencer is a well-known lawyer of St. Louis, having been engaged in the practice there for a good many years, and a man of high character and standing as a lawyer, and a reputable attorney.

Mr. SHOCK. Yes. The opinion given by Mr. Spencer was dated April 2, 1903.

Mr. HACKNEY. State who Mr. Spencer is, and whether he is a well-known lawyer of good standing.

Mr. SHOCK. Selden P. Spencer stands high in St. Louis as an attorney, and is generally regarded as one of the leading lawyers of the city.

Mr. HACKNEY. He has lived there for many years and has been engaged in the practice for many years?

Mr. SHOCK. Yes. I think he was a Federal court judge and resigned from the bench.

Mr. HACKNEY. A circuit court judge.

Mr. SHOCK. I know he was one of the judges of our higher court.

Mr. HACKNEY. You obtained this opinion, then, from him that you now have before you?

Mr. SHOCK. I did, and I paid him well for it.

Mr. HACKNEY. I will put this in the record.

St. Louis, April 2, 1903.

R. M. HUBBARD, Esq.,
322 Pine Street, City.

MY DEAR SIR: Finally reporting on the matter of the warrants of the Chickasaw Nation, concerning which I wrote you on February 25, I have to say that I have with some degree of care examined the treaties between the United States and the Chickasaw Nation running back to 1832 and as well all of the laws of the United States which are applicable to the matter and as well the laws of the Chickasaw Nation up to 1899, since which time I have been unable to secure them. They are neither in the city, nor was Mr. Purdom able to secure me a copy of them, nor was the secretary of the Chickasaw Nation able to get me a copy of them.

From this examination it appears that the Chickasaw Nation has the right, given them by the Curtis bill, to appropriate money "for the regular and necessary expenses of the government" of the tribe. And they also have the right to conduct schools for the education of their children. All other appropriations by the Chickasaw Nation must be approved by the President of the United States.

Pursuant to this authority the legislature of the Chickasaw Nation has from time to time appropriated money for the expenses of their legislature and for their incidental expenses of government, and these appropriations constitute the general war-

rants which are issued in payment therefor and which are paid by the treasurer of the Chickasaw Nation as money comes into the general fund of the nation.

The school warrants are issued in payment for supplies, teachers' salaries, and other incidental expenses of education, and are largely to be paid by the agent of the Government, who used the revenues from the coal and asphalt lands to pay the warrants in the order in which they are presented to him.

I am satisfied as to the general validity of both of these classes of warrants, general and school, and if they are only properly issued for services rendered and material furnished they are a claim against the Chickasaw Nation. The method by which the good faith of their issuance and to protect against possible forgery or fraud has been already provided for in the agreement heretofore drawn up.

The acting United States inspector for the Indian Territory, to whom my letter to the honorable Secretary of the Interior was referred, substantiates this fact, but adds further concerning the Chickasaw Nation that "their financial condition is in such shape that their warrants are outstanding for about a year and a half."

Further inquiry from private sources in connection with the Dawes Commission produces the report "that their payment is slow but sure," and continues: "As these warrants have always hitherto been paid and as the nation has money with which to pay them, it would seem that the investment would be a safe one."

Further inquiry from the chief counsel of the Dawes Commission and from the assistant United States attorney at Muskogee confirms this opinion as to their validity and safety.

To make the examination complete would require an examination of the laws of the Chickasaw Nation passed since 1898, and this can probably only be done by a personal visit to Tishomingo, an expense which I have not deemed wise to incur without special instructions. If there has not been any change in the laws of the Chickasaw Nation since 1898 (and I have no reason to believe there has been), the warrants of the nation, both general and school, are a safe investment.

If you desire a visit to be made to Tishomingo to investigate this matter and to ascertain the general character and standing of Mr. Purdom, of whom much depends and about whom I have heard nothing but favorable reports, I shall be glad to hold myself subject to your orders.

Unless this is done my examination is complete with this report.

Believe me, with great respect,

Very truly, yours,

SELDEN P. SPENCER.

Mr. HACKNEY. Now state whether or not you have any knowledge of the transaction by which M. Shoenberg, of St. Louis, became the owner of warrants aggregating the sum of \$3,441, also contained in the list submitted by Mr. Taylor.

Mr. SHOCK. I am familiar with his ownership. He had originally some \$6,000 worth, about half of which have been paid. He is a director in the Mechanics' American National Bank and a very prominent merchant in St. Louis. They were hypothecated as collateral in a loan to the Mechanics' National Bank and sold to Mr. Shoenberg, as I remember, at 80 cents on the dollar. I have a letter from Mr. Shoenberg, received by me here, stating why he is not present at this hearing, and explaining the manner of his ownership of these warrants. I will file it.

Mr. HACKNEY. You know it is his signature?

Mr. SHOCK. Yes, sir.

Mr. HACKNEY. I will put that letter in the record.

St. Louis, April 15, 1908.

Mr. FLOYD SHOCK,

Care Edwin H. Duff, 1306 F street, NW., Washington, D. C.

DEAR Mr. SHOCK: I am in receipt of your telegram asking me to come to Washington. I have an engagement here of great importance Friday, and I really can not get away without great disadvantage. I should like to appear before the committee and submit to them orally the condition under which I purchased the warrants I hold.

Inasmuch as I can not do this, I submit my plea to them through this letter, which you will kindly read to them with their permission. I purchased the warrants I hold at the solicitation of Mr. H. P. Hilliard, vice-president Mechanics' American National

Bank, who recommended them as a good investment. The warrants were accompanied by a statement over the signatures of the auditor and treasurer of the Chickasaw Nation, copy of which I gave you sometime ago. They represented that the warrants were issued in due legal form and remained unpaid.

Upon the recommendation of Mr. Hilliard and with the assurance of the validity of the warrants as given by the auditor and treasurer, I purchased them in good faith. Am an innocent holder and believe that I ought to receive protection from the Government of this nation.

I trust the gentlemen of the committee will see the justice of my claim and protect me against loss.

I trust your mission will be successful, as it deserves to be, and remain, with kind regards,

Very truly, yours,

M. SHOENBERG.

STATEMENT OF MR. J. A. CRAGIN, OF JOPLIN, MO,

MR. HACKNEY. Mr. Cragin, where do you live?

MR. CRAGIN. I live at Joplin, Mo.

MR. HACKNEY. What official position do you hold with the First National Bank of Joplin?

MR. CRAGIN. I am president of the bank now.

MR. HACKNEY. How long have you been connected with that bank in an official capacity, either as president or as cashier?

MR. CRAGIN. For over twenty years.

MR. HACKNEY. State whether or not the First National Bank of Joplin owns and holds any of these Chickasaw Nation warrants on which payment has not been made when presented to the Indian agent.

MR. CRAGIN. The First National Bank of Joplin holds \$17,667.76, face value, of warrants presented for payment to the Indian agent on which payment has been refused.

MR. HACKNEY. Do you know if the Joplin National Bank also owned some of the warrants, Mr. Cragin, of similar character?

MR. CRAGIN. Yes, sir.

MR. HACKNEY. In this itemized statement furnished by the Department your warrants are totaled as \$17,691.75, and you say the amount is a little less than that?

MR. CRAGIN. Yes, sir.

MR. HACKNEY. You think they have a confusion of the warrants, some Joplin National Bank warrants and some of the First National Bank warrants in the list they have at the office in Muskogee?

MR. CRAGIN. Yes, sir. I can explain that. In the listing of the warrants owned by the First National Bank of Joplin and the warrants owned by the Joplin National Bank, of Joplin, an error was made in the Indian agent's office wherein the First National Bank of Joplin is credited with \$179.99 of warrants properly belonging to the Joplin National Bank, and the Joplin National Bank is credited with being the owner of two warrants aggregating \$155 which are in reality the property of the First National Bank of Joplin. The difference between the two totals is something like \$20 or \$30.

MR. HACKNEY. Now, who, representing your bank, had to do with the purchasing of the warrants owned by the First National Bank of Joplin?

MR. CRAGIN. I purchased all the warrants bought by the bank.

MR. HACKNEY. State the circumstances under which these warrants were purchased in detail.

Mr. CRAGIN. Before any of the warrants were purchased by me for the bank I made a trip in connection with Mr. A. H. Waite, the then cashier of the Joplin National Bank, to Tishomingo, where we had a joint interview with the treasurer of the Chickasaw Nation, Mr. W. T. Ward, and with Mr. T. C. McLish, the auditor for said nation. Both of these parties named represented to us that the warrants issued by their nation were good and valid and that there never had been any irregularity in the conduct of the affairs of said nation. Relying upon these statements, we purchased warrants issued by said nation.

Mr. HACKNEY. From whom were these warrants purchased by your bank?

Mr. CRAGIN. I can tell you exactly.

Mr. HACKNEY. Were purchases made at the same time by both banks?

Mr. CRAGIN. No. The warrants purchased by the First National Bank of Joplin were bought from the Bank of the Chickasaw Nation, from B. H. Colbert and Kirby Purdon jointly, and from other numerous parties.

Mr. HACKNEY. When was the first purchase made by the First National Bank of Joplin, and when was the last one made, giving the whole time covered?

Mr. CRAGIN. The first purchase of warrants by the First National Bank of Joplin was on the 9th day of April, 1903.

Mr. HACKNEY. When were the last warrants bought?

Mr. CRAGIN. I can not tell that.

Mr. HACKNEY. Can you state now approximately the aggregate amount of warrants bought by the First National Bank of Joplin?

Mr. CRAGIN. The total amount of warrants bought by the bank would approximate about \$25,000.

Mr. HACKNEY. Have the others been paid that are not listed in this statement here?

Mr. CRAGIN. Yes; a number of which have subsequently been paid.

Mr. HACKNEY. At the time of the making of the several purchases by your bank of these Chickasaw Nation warrants, state whether or not you had any knowledge or notice of any kind that there was any irregularity or invalidity in the issuance of any of these warrants, or whether you supposed they would be legal, valid, subsisting obligations of the Chickasaw Nation.

Mr. CRAGIN. No, sir; I had no notice of any irregularity, and I purchased the warrants on the assumption that they were legal and valid.

Mr. HACKNEY. State whether or not you paid the purchase price at the time of getting the warrants in each case.

Mr. CRAGIN. I paid for the warrants in each case at the time of purchase.

Mr. HACKNEY. The warrants were delivered to you in every case when you purchased them, were they?

Mr. CRAGIN. Yes, sir.

Mr. HACKNEY. What was the ordinary price of school warrants?

Mr. CRAGIN. The ordinary price of school warrants was 75 cents, and for the general-fund warrants it was a little less; probably 5 cents less.

Mr. STEPHENS. Had you any notice whatever that they were invalid at the time you purchased?

Mr. CRAGIN. Before I purchased a dollar of this stuff I made the Bank of the Chickasaw Nation, or rather had them hold a meeting of the board of directors and pass a resolution authorizing their president to negotiate with us and with another national bank in Joplin for Chickasaw warrants. Here [indicating document] is a copy of the resolution bearing the signatures of the directors who attended that meeting, among which you will find B. H. Colbert, and W. T. Ward, the treasurer of the nation.

Mr. STEPHENS. It would be well to embody that in the report. I think we ought to put that right in.

Mr. HACKNEY. This statement which you now present contains the genuine signatures of the officers of the bank?

Mr. CRAGIN. Yes; such as signed it.

Mr. HACKNEY. That will be incorporated in the record.

TISHOMINGO, IND. T., April 9, 1903.

INDIAN TERRITORY, SOUTHERN DISTRICT,
Chickasaw Nation.

Be it resolved by the directors of the Bank of the Chickasaw Nation, That the president be, and he is hereby, authorized, empowered, and instructed to visit Joplin, Mo., and there negotiate with the First National Bank or the Joplin National Bank, or both, of said place, and from either or both to borrow such sums of money as may be agreed upon. And the said president is hereby given authority to execute note or notes for such loans and to hypothecate such notes, warrants, or securities as are required by said banks, and to indorse such securities on behalf of this bank.

Such notes, however, not to be made payable at an earlier date than six months from date of closing the matter, and no business to be promised said banks in the way of reciprocity, it being understood that this is to be straight "loans."

WM. F. BOURLAND.
W. T. WARD.
R. M. HARRIS.
KIRBY PURDOM.
B. H. COLBERT.
T. A. TEEL.

Mr. HACKNEY. That was obtained before you purchased any of these warrants?

Mr. CRAGIN. Yes, sir.

Mr. STEPHENS. This was part of the consideration that induced you to purchase?

Mr. CRAGIN. Yes. I would never have anything to do with the warrants without the President showing his authority, and the only way he could do that was by resolution of his board.

Mr. HACKNEY. In addition to that, you say you got a statement from the officers of the nation to the effect that the warrants that the bank was offering to you were valid and subsisting warrants of the Chickasaw Nation?

Mr. CRAGIN. Yes, sir; we did. Now, this date of the resolution is the date of my first transaction with the warrants of the Chickasaw Nation.

Mr. HACKNEY. After that time you say you bought some small amounts of warrants from other parties than the Chickasaw bank?

Mr. CRAGIN. Yes, sir.

Mr. HACKNEY. And you had no notice or intimation at all of any irregularity or invalidity of those warrants at the time you bought them?

Mr. CRAGIN. No, sir.

Mr. HACKNEY. And you paid for the warrants at the time of the purchase?

Mr. CRAGIN. Yes, sir.

Mr. HACKNEY. When did you first learn of any contention by anyone that these warrants that you had bought, or any part of them, were not valid warrants against the Chickasaw Nation, and from whom did you obtain this information?

Mr. CRAGIN. As near as I can tell, the first intimation I received that there was any irregularity in any of these warrants was in December of 1903.

Mr. HACKNEY. What was that information that you got then?

Mr. CRAGIN. Mr. Ward, the treasurer of the nation, knowing that I had purchased warrants, asked me to send him a list of all the warrants that we held, and also the Joplin National Bank of Joplin, Mo. We sent him these lists, and subsequently he told me in person, when I was down in the Territory, that from the best of his knowledge, from what checking he could do, the bank with which I am connected had some \$1,700 worth of warrants that appeared to have been previously paid by him, and that the other bank, the Joplin National, had some \$2,500 worth of similar warrants; but he said that the thing was so badly mixed up that he really could not tell very much about it, and I received no definite information other than that until I went to Ardmore, in May or June following, as a witness before the grand jury, that indicted a lot of these fellows.

Mr. HACKNEY. Did you buy any of the warrants after that time?

Mr. CRAGIN. Yes, sir; I did, but not from them.

Mr. HACKNEY. From whom did you make your other purchases?

Mr. CRAGIN. The other purchases, with two exceptions, were made for us by the American National Bank, of Tishomingo, Ind. T., from the original payees, and these warrants were all new warrants, and were purchased by them with the understanding that they were perfectly regular and proper, and that the indorsements of the payees were bona fide.

I will say in that connection that every one of these warrants was purchased as being all right, so far as any prepayment was concerned. There is not one of them that was ever previously paid. Some of them have been refused on account of some irregularities in the laws of the nation.

Mr. STEPHENS. They were transferred to you by indorsement?

Mr. CRAGIN. Yes.

Mr. STEPHENS. And you were the first owner after the transfer?

Mr. CRAGIN. Yes, sir.

Mr. HACKNEY. But after this rumor reached you that there had been some recirculation of warrants which they had undertaken to pay previously and thought they had paid, you bought no warrants that have been classified in this list since then as previously paid warrants?

Mr. CRAGIN. No, sir; not one.

Mr. HACKNEY. Now you spoke about something in relation to attending the grand jury. State what you did, Mr. Cragin, in the way of going down from Joplin, Mo., to the Indian Territory and assisting in procuring indictments against these officials who were charged with frauds and crimes against the Chickasaw Nation.

Mr. CRAGIN. I went to Ardmore, Ind. T., without being subpoenaed, and appeared before the United States grand jury as a witness. I did that simply by request by letter from Mr. Jenkins the Indian inspector. I had present all the evidence that I had in my possession, such of the warrants and different things as I had, and correspondence. I had this bunch of stuff there [indicating]. That has been before the grand jury.

Mr. HACKNEY. You mean that bunch of letters?

Mr. CRAGIN. Yes; that bunch of correspondence, in connection with a lot of other stuff. I simply made a statement to them how I had acquired these warrants upon the assurance of these different people.

Mr. HACKNEY. Did you go down there more than once?

Mr. CRAGIN. Only once before the grand jury. I subsequently have been to Ardmore to appear as a witness in their trial, which has not occurred to date.

Mr. HACKNEY. Do you know that one of these men is a fugitive from justice—said to be?

Mr. CRAGIN. Yes.

Mr. HACKNEY. Please state whether or not Mr. Shock, of St. Louis, also appeared before the grand jury to assist in the prosecution of these parties.

Mr. CRAGIN. Yes; Mr. Floyd Shock, of St. Louis, was present at Ardmore before the grand jury, and also appeared before it as a witness in the case against the parties then indicted at the same time that I did.

Mr. HACKNEY. Now, Mr. Cragin, you spoke of the Joplin National Bank purchasing some of these warrants at the same time that you did for the First National. Will you state whether or not there was anything to indicate to Mr. Waite, or the Joplin National Bank, any irregularity or impropriety or invalidity of the warrants bought by that bank?

Mr. CRAGIN. No, sir. The Joplin National Bank had no knowledge of any irregularity or illegality regarding any of these warrants. They acquired their warrants—in fact I think all of the warrants they acquired were acquired at the time I got my first, which was in April, 1903.

Mr. HACKNEY. And the Joplin National Bank also paid for the warrants it obtained, and substantially at the same figures that you paid for yours?

Mr. CRAGIN. Yes, sir.

Mr. HACKNEY. Did the Joplin National Bank also have warrants, some of which were paid, as well as you?

Mr. CRAGIN. Yes, sir.

Mr. HACKNEY. Now, Mr. Humphrey, you may make your statement. Give your name and address to the reporter.

STATEMENT OF MR. JAMES E. HUMPHREY, OF ARDMORE, OKLA.

Mr. HUMPHREY. My name is James E. Humphrey, of Ardmore, Okla. I am the attorney for Mr. C. R. Smith, of Ardmore, Okla., who at the time of the purchase of certain warrants, as I shall hereafter state, was president of the Ardmore National Bank, and at this time he is president of the Farmers' Loan and Security Company,

of Ardmore, Okla. He is the owner of the warrants designated in Mr. Taylor's statement as filed by the National Bank of Commerce, of St. Louis, Mo., and the Ardmore National Bank, of Ardmore, Okla., amounting to \$38,981. The National Bank of Commerce at the time the warrants were presented to the Indian agent held said warrants as collateral to a loan of money made by Mr. Smith, as also did the Ardmore National Bank.

I also represent the American National Bank, of Tishomingo, who own \$808.50 of these warrants; also the estate of Overton Love, deceased, who is represented on the list as furnished by Mr. Taylor by Sam Black, who is one of the executors of his estate, in the amount of \$6,659.15, or a total of \$45,911. None of the warrants represented by me have ever been paid by the Chickasaw Nation.

Mr. HACKNEY. And no claim is made that they have been paid?

Mr. HUMPHREY. And no claim is made that they have been paid, and no claim is made that they were issued by fraud; and all the warrants represented by my client were issued on authority of acts of the Chickasaw legislature, duly signed by the governor, except two warrants designated as class 4, amounting to \$170. All other warrants, as I stated before, were issued upon laws enacted by the Chickasaw legislature and approved by the governor for the salaries and expenses of the various officers connected with the Chickasaw government. The bulk of the warrants owned by my client is for salaries and expenses of the legislature of the Chickasaw Nation, designated as class 10, amounting to \$27,607.65. My client bought and paid for these warrants in due course of banking business, and was advised by the firm of Ledbetter & Bledsoe, of Ardmore, that the warrants he purchased, being for appropriations for the "regular and necessary expenses" of the government of the Chickasaw Nation, were, under the Curtis bill, valid obligations of the Chickasaw government.

Mr. HACKNEY. What do you mean by the Curtis bill?

Mr. HUMPHREY. The Curtis bill provides that no ordinance shall be of any validity except it be approved by the President of the United States, except acts appropriating money for the "regular and necessary" expenses of the government of the Chickasaw Nation; and these warrants were each and all issued, with one exception, as I stated before, for the regular and necessary expenses of the government of the Chickasaw Nation—the salaries and expenses of members of the legislature, and delegates to Washington, and inspectors, and so forth. The warrants are each and all at this time in the hands of the United States Indian agent at Muskogee. They were all purchased for a valuable consideration, none of which were purchased for less than 75 cents on the dollar, and for some he paid as high as 90 cents.

The position of the Indian Office, as I understand, is that these various acts did have to be approved by the President of the United States, and consequently that they are not regular warrants, and consequently that the Secretary has not the authority to pay under existing law.

Mr. HACKNEY. Your contention as an attorney is that these ordinances or acts did not require the approval of the President?

Mr. HUMPHREY. Yes, sir.

Mr. HACKNEY. And that was the opinion of a great many other lawyers in the country?

Mr. HUMPHREY. Yes; and my client acted upon that advice in the purchase of these warrants.

Mr. HACKNEY. The failure to have the approval of the President is the only technical objection to the payment of these warrants as valid claims against the Chickasaw Nation?

Mr. HUMPHREY. That is correct, except as to the Chapman warrants, in class 4. It seems that as to those warrants, he was the auditor of the Chickasaw Nation and was authorized by the laws of the Chickasaw Nation to receive a salary of so much money, and that he issued those and a number of other warrants, amounting to about \$3,000, for expenses of his office, which the acts of the Chickasaw legislature did not authorize. Yet they were regular upon their face and duly signed by the officers of the Chickasaw Nation, and were purchased by my client in good faith.

Mr. HACKNEY. In due course of business?

Mr. HUMPHREY. In due course of banking business.

Mr. HACKNEY. Now, Mr. Humphrey, you may state what, if any, official position you have held in the Indian Territory prior to statehood?

Mr. HUMPHREY. I was appointed first assistant United States attorney for the southern district of Indian Territory, March 1, 1898, and held that office continuously until statehood, November 16, 1907.

Mr. HACKNEY. You were acting in your official capacity as such assistant district attorney in the matter of the indictment of these officials?

Mr. HUMPHREY. I was, and I drew the indictments.

Mr. HACKNEY. You may state whether or not Mr. Cragin, of Joplin, Mo., and Mr. Shock, of St. Louis, voluntarily appeared and assisted in giving testimony before the grand jury on which these defaulting officials of the Chickasaw Nation and others were indicted for some crimes against the Chickasaw Nation with respect to the issuance of these warrants.

Mr. HUMPHREY. They were both present and testified voluntarily.

Mr. HACKNEY. Have you, in a general way, made any investigation of the matter of these outstanding warrants listed here as amounting to something like \$107,000, as to which the Department makes objection to payment?

Mr. HUMPHREY. In connection with the ones I represent, I have.

Mr. HACKNEY. And can you state as to whether, according to your best information, these warrants, with the exceptions noted by Mr. Taylor in his statement, are held by banks and other persons, who bought them in due course of business, in a regular way, without any knowledge of their irregularity?

Mr. HUMPHREY. Yes, sir; I have called, since I have been in the city, upon the Secretary of the Interior, and by direction of Assistant Attorney-General Woodruff I was furnished with a list of the various banks, trust companies, estates, and individuals that were the holders of the warrants at the time they were presented to the Indian agent.

Mr. HACKNEY. That is in conformity with the statement Mr. Taylor made this morning?

Mr. HUMPHREY. That is in conformity with Mr. Taylor's statement.

Mr. HACKNEY. You may state whether or not, Mr. Humphrey, from your examination of the matter, both from the legal standpoint

and from the business standpoint, these outstanding warrants, issued as they were and put into circulation as they were, and purchased by the several holders, are such obligations as ought to be paid, and whether or not some provision ought to be made for their payment out of the funds of the Chickasaw Nation.

Mr. HUMPHREY. There is no doubt in my mind as a lawyer but that the purchasers for value and in good faith should be reimbursed for the purchase of the warrants of the Chickasaw Nation.

Mr. HACKNEY. If anyone was at fault in respect to putting these warrants out into the commercial world as valid obligations of the Chickasaw Nation, the fault lay with the officials of that nation, did it not?

Mr. HUMPHREY. It did. I could make a short statement and make that plain to the committee.

Mr. HACKNEY. We would be glad to have it.

Mr. HUMPHREY. I obtained this information on account of my official position. The Bank of the Chickasaw Nation had a capital of \$35,000 and deposits of \$125,000. At about the time they commenced to deal in Chickasaw warrants with Floyd Shock & Company and with the banks at Joplin, Mo., Kirby Purdom was president of this bank, and Ward, the treasurer of the Chickasaw Nation, was one of the vice-presidents and a director. Purdom had not had much experience in banking business prior to coming to Tishomingo. The bank, however, was the designated depository of all the funds and papers of the Chickasaw Nation, and Mr. Ward, the treasurer, was directed by the Chickasaw legislature to deposit with the bank all papers of the nation for safe-keeping in the bank.

The bank made some unfortunate loans, in that some \$30,000 or \$40,000 was loaned to one of the stockholders, ex-Governor Harris, for the Granite Bank Building, which the bank occupied, and which Mr. Harris was unable to pay for, and the bank's capital was exhausted on the bank building. Mr. Purdom and the parties connected with him in the bank were what we call "town boomers." They built a cotton-oil mill there, and expended in the neighborhood of \$60,000 in this oil mill, \$37,000 of which was for machinery on credit in addition thereto, and a mortgage was taken on the entire plant. The money was borrowed from the officials, from the stockholders and customers of this bank, to build this oil mill. They also invested about \$8,000 in the Fisher Hotel Building, and about the same amount in a brickyard to make fancy and pressed brick.

Their unfortunate investments being tied up in real estate, their competitors in the city promptly took advantage of them, and their deposits commenced to be withdrawn gradually; and they, not having any considerable money in the bank, resorted to the way of putting up their loans and discounts to get collateral security for money to keep their heads above water. I had occasion to examine the books of the Bank of the Chickasaw Nation, which is now in the hands of a receiver, and the books showed that the money derived from the banks at Joplin and in the dealings with Shock & Company, appears regularly upon the books, but it was by a system of "kiting," as bankers call it, and they appear to have used these warrants that Mr. Ward had deposited with the bank for safe-keeping as collateral security or as straight sales to get money to keep the bank's head above water, which all appears upon the books. The bank closed

when they had exhausted all of their resources to get money to float, the deposits being less than \$40,000 when the bank closed. Had they been able to dispose of their real estate they could probably have paid their indebtedness and have had a surplus left.

Mr. Purdom was indicted, and officially I sought to get him back into this country, as he is a fugitive from justice. But he is now in Honduras, with which country the United States has no extradition treaty covering this class of offenses. We made an effort to get him, but we could not get him.

Mr. HACKNEY. What was the charge against Purdom?

Mr. HUMPHREY. Conspiracy to defraud the Chickasaw Nation; and he is also indicted for larceny. In the case of several of his depositors who owed notes at the bank and who had come in to pay the notes, he had the notes put up as collateral with other banks to get money. He would accept the money in payment of his customers' notes, and give his customers a receipt for the notes. Then he would place the payment made by the customer on the books of the bank as a deposit; and he is indicted for many such offenses.

The net result of my investigation does not show that Mr. Kirby Purdom ever profited anything by these fraudulent transactions, as a matter of dollars and cents. It was all absorbed in his town-site booming, and in his unavailable real estate.

On my way here I called upon the governor of the Chickasaw Nation at Tishomingo in reference to the warrants which I represented and had a conversation with him. I also examined the books of the Chickasaw Nation in the hands of the assistant secretary, Mr. Thompson, to see whether the warrants I represent were regular, and found that they were. Mr. Thompson and the governor informed me that my warrants and also these recirculated warrants in the hands of banks and trust companies, as he felt, ought to be paid, and if the committee or anybody else would call upon him for an expression of opinion, he as governor of the Chickasaw Nation would recommend that they be paid.

Mr. SHOCK. He has made that same statement to me, and the other commissioners that were with him confirmed it. There is an injustice in the fact that this paper that I could hold as collateral is retained.

**CATHOLIC CHURCH CLAIMS IN
THE PHILIPPINE ISLANDS**

HEARINGS

**BEFORE COMMITTEE ON INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES**

JANUARY 16, 20, 21, 22, AND 23, 1908

**WASHINGTON
GOVERNMENT PRINTING OFFICE
1908**

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CATHOLIC CHURCH CLAIMS IN THE PHILIPPINE ISLANDS.

COMMITTEE ON INSULAR AFFAIRS,
HOUSE OF REPRESENTATIVES,
Washington, D. C., January 16, 1908.

The committee met at 10 o'clock a. m., Hon. Henry Allen Cooper, chairman, presiding.

STATEMENT OF LIEUT. COL. JOHN A. HULL, JUDGE-ADVOCATE, UNITED STATES ARMY.

The CHAIRMAN. Gentlemen of the committee: This morning we are to hear testimony concerning the proposed bill—there has been no bill yet introduced, but we expect that one will be—to pay the so-called Catholic Church claims of the Philippine Islands. Claims have been filed by the Catholic Church in the Philippine Islands for damages done to church property and for use and occupancy by our military forces of the church property in the Philippine Islands during the insurrection. Colonel Hull, will you give your name in full?

Lieutenant-Colonel HULL. John A. Hull.

The CHAIRMAN. What is your rank?

Colonel HULL. Lieutenant-colonel, judge-advocate, United States Army.

The CHAIRMAN. Where are you now stationed?

Colonel HULL. At Governors Island, New York.

The CHAIRMAN. How long have you been stationed there?

Colonel HULL. I have been there since September 16, 1907.

The CHAIRMAN. How long have you been judge-advocate?

Colonel HULL. Since May 9, 1898.

The CHAIRMAN. Have you done service in the Philippine Islands?

Colonel HULL. I have served two terms in the Philippines.

The CHAIRMAN. When did you first go there?

Colonel HULL. I landed there on the 3d of March, 1899, and left there on September 23, 1900. On my second tour I landed January 27, 1905, and left there January 15, 1907.

The CHAIRMAN. You have traversed the archipelago thoroughly, have you?

Colonel HULL. To a considerable extent, for an officer whose duties have required him to be in Manila. I have traveled the islands in connection with the Catholic Church claims and in connection with the suits growing out of military reservations, both items of which were under my control.

The CHAIRMAN. Were you a member of a board of officers which convened at Manila under instructions of the War Department to consider the Catholic Church claims?

Colonel HULL. I was; I was president of that board.

The CHAIRMAN. Of whom did the board consist?

Colonel HULL. It first consisted of myself, Colonel Brodie, and Major Gibson. Afterwards Major Gibson was ordered to St. Petersburg as military attaché and Lieutenant Moore, of the Second Cavalry, was put in his place. In the additional proceedings, as Lieutenant Moore was then in United States, Major Gallagher was detailed to complete the board. I might state that before the receipt of the instructions of the War Department to convene a board the commanding general, General Corbin, had received instructions to receive these cases and had detailed me to meet a representative of the Papal delegate to settle them. After having worked under those instructions for about two weeks, instructions were received to convene a board with myself as president.

The CHAIRMAN. Those instructions were received when?

Colonel HULL. In 1905.

The CHAIRMAN. While you were still in Manila?

Colonel HULL. Yes, sir.

The CHAIRMAN. Where did the board convene?

Colonel HULL. At Manila, P. I.—Division of the Philippines.

The CHAIRMAN. You considered the claims, did you?

Colonel HULL. We did.

The CHAIRMAN. What are those documents that you have before you?

Colonel HULL. These are the various documents that were presented to the board on church claims by the Papal delegate, and also the documents referring to the cases which we took from the military records and archives, and also papers showing the result of our own investigation.

The CHAIRMAN. Your own independent investigation?

Colonel HULL. Yes, sir.

The CHAIRMAN. Those are the original documents, are they, filed in connection with the claims?

Colonel HULL. These are the original documents which were considered by the board.

The CHAIRMAN. They bear your own file numbers, do they?

Colonel HULL. I see my own mark is on the papers which are in front of me.

The CHAIRMAN. You considered those cases individually, did you?

Colonel HULL. Yes, sir.

The CHAIRMAN. You went over each one, did you?

Colonel HULL. Yes, sir; took them up one by one.

The CHAIRMAN. Now proceed in your own way and state the nature of those claims, the amount originally asked, what you think of the merits of the proposition, etc. Go into the matter as fully as you please.

Colonel HULL. Well, I desire to say, Mr. Chairman, in the first place, that if anyone will take up and study any individual case here—

The CHAIRMAN. By the way, before you proceed let me get one fact clearly before the committee. There are two sorts of claims here, are there not, those of the friars and those of the other claimants?

Colonel HULL. Yes, sir.

The CHAIRMAN. Please explain the difference between the two.

CLASSES OF CLAIMS.

Colonel HULL. One class of cases was presented by the Papal delegate, that consisted of the church proper and also the Jesuit claims. The Jesuits put their claims in through Rome, and the other religious organizations, the so-called friars as corporations, presented their claims through two firms of attorneys in the city of Manila. They were treated differently by the board for reasons which I can explain if the published reports are not full enough.

The CHAIRMAN. You have made that distinction clear. Proceed now with your statement in your own way.

PROCEDURE OF BOARD.

Colonel HULL. Anyone who will look at these documents can see that the board was confronted with a very serious problem. There is no one who can study these exhibits from a biased standpoint, either from a standpoint of an advocate of the church or as an anti-clerical, who can agree with the report of the board in a single case. I mean, if you take any individual case and look at it from the standpoint of a partisan of one side or the other the report of the board will not meet with your approval. We have given almost our entire time to this report, as you know, for a long period of time. We went into each question as thoroughly as the time and circumstances would permit, and we tried to arrive at what we considered was a fair compensation and award under all the attending circumstances. In all these cases I have no doubt but that the board might have done injustice to either the Government or to the church, but so far as I know—and I was there some time after the report was made and continued to get information—no specific case of injustice has come to the attention of the authorities. I desire to say that owing to the work it is very possible that such has been done, but it was purely unintentional and arose from the lack of information if such was done. The board used every possible source of information. We were personally acquainted with the towns and with their importance and with the nature of the church buildings, and with the general conditions existing in the individual towns, and treated each case as an individual case, not knowing what the sum total would run to until it was figured up after the entire report was made. The exact figures I do not now remember, not having seen these papers for some time, but they are given in one of the schedules attached to the report.

AGGREGATE OF CLAIMS.

The CHAIRMAN. The claims aggregate, approximately, \$2,000,000, do they not?

Colonel HULL. I think it was more than that. My recollection of the figures is that it was 4,885,000 pesos, which would be approximately two and a half million dollars.

- The CHAIRMAN. A peso being equivalent to 50 cents of our money under the law passed by Congress.

Colonel HULL. Yes, sir.

The CHAIRMAN. What was the aggregate of your award approximately?

Colonel HULL. The award of the original board was \$363,030.19.

The CHAIRMAN. The claims were for \$2,400,000, approximately, and your award was about \$363,000?

Colonel HULL. Yes, sir.

The CHAIRMAN. Now, please explain anything you desire as to an individual claim, how you took it up, and what you did with it—just specify any particular claim.

CLAIM OF CATHEDRAL OF MANILA.

Colonel HULL. Well, I can take claim No. 1. That is the claim of the Cathedral of Manila. As to that claim—I am speaking from memory now—the papers consist of a claim, an affidavit filed by the church authorities by, I think, the canon of the cathedral and one of the priests in attendance at the cathedral, setting forth damages and rentals amounting to 17,818 pesos. On that we have a report of an officer, Major Fremont, who in 1902 was designated to investigate these cases. In addition to that I was in Manila at the time that this cathedral was occupied—my office then was in the old throne room at the palace, and as a consequence went past the cathedral most every day and had personal knowledge of the conditions that then existed, which Major Fremont did not have. In addition to that I took the sworn testimony of the canon of the cathedral, a gentleman of high attainments and character, and went over the ground with him personally, talking with him and refreshing my memory with him from talk and and personal inspection. We then made the estimate which we reported as the finding on that one individual claim.

The CHAIRMAN. What was the nature of the claim, and what were the damages?

Colonel HULL. At the time the American troops entered Manila, on August 13, 1898, there were a number of Spanish troops and one or two regiments of native Spanish troops that were driven from the barracks that they were then occupying, by the American troops, who needed shelter. The arrangement by which the Spanish troops went into the churches and conventos situated in the city of Manila is in obscurity. It was, I think, done by the commanding-general of the Spanish forces, and the then archbishop of Manila, with the acquiescence of the commanding-general of the Philippines. There was a large number of troops there and they had to have shelter, and, as I say, the American troops took the barracks; this left the other men without shelter and they proceeded to take the churches and conventos. There was a large number of these so-called prisoners of war quartered in the cathedral. They abused it shamefully, damaging the woodwork, and the sanitary condition was such, after a few months' occupancy, that when the property was turned back to the church it was necessary to turn the hose on it and wash it out that way.

The CHAIRMAN. Describe the building. What was the character of the building?

Colonel HULL. The building is a very large, fine old stone structure, with very large dome and high walls, and it had some very fine woodwork—such a building as you would expect to find in a cathedral in the principal city of a Catholic country. A large number of the prisoners of war were held there and at the time of the outbreak, on the 4th of February, as there were a number of native troops there, and we were afraid they would join the insurrection and add to the trouble, they were kept under very close guard for some time, and in that way the damages were increased, because they were locked up in there, and in a spirit of wantonness they destroyed everything that was destructible.

Mr. OLMSTED. Is that the principal church there?

Colonel HULL. That is the principal church in the island, it is the cathedral of Manila. It is on the Plaza. Some of the members of this committee I know have seen it—it is on the Plaza and as you go into the governor-general's office, it is on the right-hand side of the Plaza. That claim which I was discussing—the 17,318 pesos—was scaled down to 11,000 pesos.

The CHAIRMAN. That is \$5,500.

Colonel HULL. Yes, sir; exactly \$5,825 was the allowance for that. It was occupied for seven months and there was an amount of damage done to the woodwork and the interior of the building. I am positive that with that allowance the church would not make money in renting its property.

Mr. CRUMPACKER. Do you think that is full compensation for the occupation of the building and all the damage to the property during the occupancy?

Colonel HULL. There was a certain amount of wanton damage that I think was scaled down; there was some wanton damage that was not considered. Is that an answer to your question?

Mr. CRUMPACKER. Yes.

Mr. JONES. Was any of that damage done by American troops?

Colonel HULL. In the occupancy itself?

Mr. JONES. Yes.

Colonel HULL. No, sir; that was done by the prisoners of war.

Mr. JONES. It was done by the Spanish troops who occupied the cathedral after the building had been occupied by the American troops?

Colonel HULL. They were under our control as prisoners of war. Our troops never occupied it.

Mr. JONES. Were they directed by American commanders to take possession of this cathedral and occupy it?

Colonel HULL. As I have said, there was no positive direction, but we acquiesced in it and afterwards held them in there by force. They were under American guard in that building for a time.

Mr. GARRETT. As I understand, you have allowed what you considered to be a reasonable rental, or reasonable payment for actual use, and have eliminated all wanton or tort damage?

Colonel HULL. Yes, sir; in this report we tried to allow for the compensation for the rental and for the damages incident to the wear and tear of such rental; while in this country rentals always include the ordinary wear and tear on the building, as these claims were presented otherwise we considered them otherwise.

RESPONSIBILITY OF GOVERNMENT.

Mr. GARRETT. You have followed throughout the well-defined rules of war that a government will not pay for property wantonly destroyed.

Colonel HULL. That is correct.

Mr. GARRETT. And have made the distinction between wanton destruction and use?

Colonel HULL. Yes.

Mr. CRUMPACKER. Let me ask you a question right there. Suppose the United States Army used this cathedral for a military prison and held there in confinement a number of prisoners of war, and those prisoners of war while so confined in the cathedral perpetrated wanton acts of vandalism and destruction, those wanton acts would ordinarily be the incidents of our occupation, and we would be responsible for them, would we not?

Colonel HULL. I think you are correct as to prisoners of war especially.

Mr. CRUMPACKER. Or if they were occupied as a barracks or occupied at all for use in our occupancy, but any damage beyond what might reasonably be called the ordinary wear and tear—because occupancy was wanton acts of destruction—still our Government would be responsible, would it not?

Colonel HULL. No, sir.

Mr. CRUMPACKER. Well, I had difficulty in understanding the responsibility under the law.

Colonel HULL. You are asking me that question of course as a legal question. My impression is, of course, that the Government is not responsible for the torts of its agents.

Mr. CRUMPACKER. Where the Government occupies the property of a noncombatant for its own use and puts its agents in charge and those agents commit damage while in charge under authority of the Government, it seems to me that under well-established principles of law the Government would be responsible for that damage. The Government, of course, is not liable for any injury that results to the property of noncombatants as an incident of war.

Colonel HULL. That was also rejected.

Mr. CRUMPACKER. Those claims, from the standpoint of law, would probably be rejected, but when you come to the other question, I think where a landlord has a tenant, the tenant of a building is responsible for the ordinary wear and tear or acts of wantonness and destruction that he commits while he is occupying the building. I think the Government is responsible for that.

Colonel HULL. The question has been several times before the Government and so far as I know they have always followed the rule that is laid down in Story on the Constitution, that the Government is not responsible for the torts of its agents in all cases.

Mr. CRUMPACKER. That rule of course is right as a general proposition, but the situation here is peculiar, where the Government puts its agents in custody of the property and the custodians, taking advantage of their possession or their custody, destroy property.

Colonel HULL. There is no question but that would raise an equitable claim, but as a legal claim I do not think it raises one.

Mr. CRUMPACKER. Of course, if the agent of the Government should go out and destroy the property of a noncombatant which the Government had no responsibility for, you are right, but when the Government takes possession of a church for its own uses then the Government is under obligation to take care of that property. In the meantime the owner has no control over it, and is naturally unable to protect it, because the Government having taken charge of it assumes the responsibility of protecting it against wanton destruction, particularly of its own agents.

INSTRUCTIONS TO BOARD.

Colonel HULL. The board acted upon that question under the instructions which were considered by the Secretary, and a copy of them is attached to the report, in which I find the following:

Third. Wanton damage by soldiers, theft of church property, etc.—

I read from a letter of the Secretary of War dated September 2, 1905—

It is said that a large number of cases with an immense aggregate have been filed which fall under this head; that so far as the board has been able to look into these cases, it will be impossible to ascertain any facts in relation to this class; that the witnesses presented by the church will seldom swear to more than the goods disappeared while the Americans were in possession; that such a long time has elapsed that the statements will be so vague as to be almost impossible to contradict; that it is a well-known fact that some damage was done by American troops, but every case that came to the attention of the authorities was promptly investigated and the guilty persons punished and reparation made whenever it was possible to do so; that no complaints were filed by the church authorities while the events were fresh and evidence obtainable, and it is believed that it is now impracticable to make any investigation; that the improbability of many of the claims is shown by the fact that items of silver, etc., are claimed as taken away by the Americans although the property had been abandoned by the church and was in the possession of the insurgents for a long time.

With respect to this class of claims, all I can say is that the board must use its sound discretion. Under the principles of law which are well understood, the wanton destruction of property by an enlisted man or a number of enlisted men, without the authority, either given in advance or conferred afterwards by ratification in pais, of the commanding officer, does not make the United States responsible; but there must be in such cases many instances of damage or destruction by enlisted men in the course of the occupation of the building that were either directly authorized by the commanding officer or were of such a character that the commanding officer must in the occupation of the building have anticipated that such damage would take place, and so in effect authorize it.

Now, there is a class of damages, usually incident to occupation by soldiers, with respect to which the Government might always be made liable. The seizure, however, of sacred vessels, of sacred vestments, presumed only by their absence at the end of the occupation by the soldiers, I should regard as of very doubtful validity—unless the evidence were direct tending to show that this course was taken by the soldiers and authorized by the officers; and, especially, are presumptions of this character not to be indulged in where there was previous occupation by the insurgents, and where the evidence is not distinct of what the condition of the buildings was when entered and the presence of particular property when the United States entered into occupation. I do not intend to advise the board to be technical or to be illiberal in estimating damage to property ordinarily incident to occupation by troops who are not particularly careful of the property in which they live; but I do wish to advise against the allowance of large damages for the disappearance of particularly valuable vessels or vestments which were probably stolen long before the troops entered into occupation, and with respect to which it is to

be supposed the church authorities would exercise the utmost care in their preservation before the occupation of the property by the troops. I can not give more direct instructions on this point and must trust to the careful examination of the board in not making unreasonable and excessive recommendations, but in allowing everything in the way of damages which might reasonably have been anticipated by those familiar with the methods pursued by soldiers in an enemy's country in the occupation of buildings with the relaxation of discipline that follows such unusual circumstances.

Mr. CRUMPACKER. Who issued that order?

Colonel HULL. Hon. William Taft, in reply to a letter drafted by me.

Mr. JONES. I want to ask you a little more definitely about the facts; I do not care so much about the law, but want to get at the facts. This cathedral was first occupied by the Spanish soldiery without any direction on the part of the American commander, was it not?

Colonel HULL. There was no direction on the part of the commanding general so far as I could find.

Mr. JONES. How long was the cathedral so occupied before it was turned into a prison, so to speak?

Colonel HULL. I should say not over a day or so.

Mr. JONES. Not over a day or so?

Colonel HULL. Yes, sir. This especially in view of the fact that the cathedral and the commanding general's office adjoin, and looking out of his windows he would have to see the condition that existed. They were prisoners of war. When I got there they were under guard.

Mr. MADISON. Then the principal amount of damages is attributable to the acts of the prisoners of war, who were in fact prisoners of war at the time the damage occurred?

Colonel HULL. I think so, and that was the reason that most of it was allowed.

Mr. MADISON. Now as I understand, Mr. Crumpacker, your position is that the relationship between the Government and the church was in fact the same as that of landlord and tenant?

Mr. CRUMPACKER. I think most certainly that the Government would be bound to see that its agents or officers did not perpetrate wanton acts of damage. It is like a man who has a big family in an apartment building and his children write on the decorations on the wall. I think he is responsible just the same. Now what I would like to know is this: It would be doubtless impossible for us to go through these several claims in detail—

Colonel HULL. It would take you about as long to do it now as it took us to do it, and that was at least six months.

Mr. CRUMPACKER. I want to know whether this investigation and your report were based upon principles of law and equity, and if your endeavor was to do justice to the claimants and to protect the Government at the same time?

Colonel HULL. I can assure you that that was our leading object.

WANTON ACTS OF INJURY.

Mr. CRUMPACKER. Now, in these several investigations where there was evidence satisfying your mind that our troops or prisoners of war committed wanton acts of injury to property, either to furniture or

decorations or anything else, while they were in custody, was it your policy to generally disallow those items?

Mr. MADISON. As I understand, Mr. Crumpacker asks you whether or not you followed the same rule in all cases as you did in the case of the cathedral at Manila?

Mr. CRUMPACKER. I ask it as a general proposition.

Colonel HULL. Please read the question.

(The reporter read the question.)

Colonel HULL. I had the question repeated in order to properly understand it. There was a distinction made by us between the prisoners of war and our occupancy. Where we were satisfied that actual, wanton damage had taken place the board as a rule rejected the claim in the latter class of cases, but were a little more liberal in their estimation of the rental.

AMOUNT OF DAMAGE BY WANTON ACTS.

Mr. CRUMPACKER. Colonel Hull, have you any idea of the amount of damages that were committed by our troops, or prisoners held by us, wantonly and that were disallowed—have you any idea of about the amount of damages of that character that were proven?

Colonel HULL. No, sir; I could, by going over the papers, give you approximately the amount of damages claimed which would come under the head of wanton, but the number that were clearly substantiated is small. That is covered I think in one of the supplemental reports. There are two reports, as you know, and the amount of damages was estimated. The report, however, was as to the amount of such damages claimed by the church, as it was almost impossible to arrive at a definite conclusion in each case where it was presented. In a few cases the evidence was concluded, but in most of the cases the evidence was highly inconclusive and we did not pursue the investigation because we would never have completed the work if we had gone into each case of wanton damage. Does that answer your question?

EXAMINATION OF WITNESSES.

Mr. CRUMPACKER. Yes. You I assume examined all of the available witnesses and secured all the information that was possible in your investigation as to each of these several claims?

Colonel HULL. We did; yes, sir.

Mr. CRUMPACKER. The witnesses testified under oath, I suppose?

Colonel HULL. Yes, sir; they did.

Mr. CRUMPACKER. And you examined people who lived in the vicinity and knew personally about the matter and officers who occupied the premises and knew something of the character and extent of the occupancy?

Colonel HULL. We did, wherever we could. We searched the records of the Adjutant-General's office constantly to learn the names of the officers who had been in that vicinity, and had talks with them and took their testimony and got their statements.

Mr. CRUMPACKER. Then I presume you acquainted yourselves with the condition of the property before its occupancy by the United States?

Colonel HULL. We did as far as possible, but in very many cases that was very hard to determine.

Mr. CRUMPACKER. I assume that it was. Now, in all cases, I understand, where there was destruction of property—not on account of Federal occupation, but as an incident of war, damages by besieging communities, cities, or something like that—no allowance was made.

Colonel HULL. No allowance was made in such cases; that was rejected as an incident of war. The amount of those claims is quite large. A number of church properties were burned and destroyed by fire.

Mr. CRUMPACKER. A good deal of that was done by the insurgents, was it not?

DESTRUCTION BY FIRE.

Colonel HULL. A great deal of that was done by the insurgents. Several of the insurgent generals made it a practice to burn those buildings because they thought we would have no place to shelter our troops.

The CHAIRMAN. Right there, I remember your itemized report in which you set forth each claim by number and somewhat in detail. Toward the conclusion of that report you go on to say that where there was a destruction by fire it must have been as an act of war by the insurgents or by our troops, or else a wanton destruction by somebody, or an accident.

Colonel HULL. Yes, sir.

The CHAIRMAN. And in none of those cases did you award any damages?

DESTRUCTION BY GENERAL LUNA.

Colonel HULL. That is correct.

The CHAIRMAN. Now, then, it is a matter of history that Luna, when he tried to escape from Lawton, blew up a lot of conventos, did he not, and destroyed a great deal of other property?

Colonel HULL. Yes, sir.

The CHAIRMAN. And you allowed nothing for that?

Colonel HULL. We allowed nothing for that. As you go up the railroad, for instance, north of Manila you will find that every church up there has been destroyed. General Edwards can probably remember of going into town after town at the time the conventos were being burned when our troops entered. The church at Malolos was destroyed by that means just before our troops entered; the church was set on fire.

DESTRUCTION OF GUADALUPE CHURCH.

The CHAIRMAN. Do you know of any case of the destruction of church property in the Philippine Islands by fire where such destruction was commanded by our officers?

Colonel HULL. There were several. To take one specific case, the evidence would tend to show that the Guadalupe church, a very fine structure about 5 miles from the city of Manila, was destroyed by a company of the First California Volunteers acting under the instruction of Brig. Gen. Charles King. That was destroyed apparently

because he was drawing our lines back and that would have left an opening just in advance of his line that could be made use of as a military base.

The CHAIRMAN. Was compensation claimed for that?

Colonel HULL. Yes, sir.

The CHAIRMAN. What was done with that claim?

Colonel HULL. It is covered in a full report. All the evidence is set forth in the claim of the friars of the Augustine Order.

The CHAIRMAN. It was not allowed, was it?

Colonel HULL. It was not allowed, but we made a finding of fact as far as we could.

The CHAIRMAN. It is not included in this—

Colonel HULL. It is not included in this \$363,000; no, sir.

Mr. GARRETT. Does it fall under the head of that Catholic Church claim?

Colonel HULL. No, sir.

Mr. CRUMPACKER. Do you know the finding with relation to the value of that property?

Colonel HULL. It is claim No. 3 of the friar claims, on page 5 of the report of the board—

Destruction of church and convento at Guadalupe, amounting to \$238,000. The Augustine fathers had as a rest house on the banks of the Pasig River, a short distance from Manila, a large magnificent convent of solid masonry construction. This building was started in the early part of the seventeenth century—

I think it was in 1607 that that building was started—

and was joined by a medium-sized modern church. The convent was also in possession of a fine library. The log book of the *Laguna de Bay* under date of Friday, February 17, 1899, 8.20 p. m., states—

We looked up the old log book of that gunboat—

"It was ordered by General King (Brig. Gen. Charles King, U. S. Volunteers, brigade commander at San Pedro Macati), in case the force investing Gaudalupe was strongly attacked to fall back to San Pedro and blow up the building."

These orders were issued shortly after the insurrection had broken out, and at a time that preparations were being made to resist the burning of Manila, which attempt was made February 22. The log book further shows that under date of February 19, 1899, "It was deemed best to withdraw our troops from Guadalupe, although no strong force of insurgents had advanced, and the troops abandoned and fired the convent 5.30 a. m. A continual fire from insurgent sharpshooters, their fire was returned by occasional fire from the rifles, gatlings, and 3-inch guns. Shells were thrown into the convent to explode the nitroglycerin unsuccessfully." These orders were doubtless issued by General King and were carried out by a company of California volunteers. They were evidently issued as a military necessity, and there is no evidence of bad faith on the part of the military commander. It is impracticable for this or any other board, at this late date, in such a proceeding as this, to go into the question as to whether the action of the officer was proper or not. We do not know on what information he acted, nor what trouble he was anticipating. In the light of subsequent events, it is easy to say that the destruction of the buildings and contents was a thing to be regretted, but even this does not create a liability on the part of the United States.

If anything should be paid for this destruction, we would recommend that the sum of \$220,000 be appropriated, but as the damage was caused as an incident of warfare, we recommend that the same precedents and reasons that heretofore have caused the denial of such claims be followed.

The CHAIRMAN. How many prisoners at a time were confined in that cathedral at Manila?

Colonel HULL. The exact figures are in the papers. At one time I should say there were over 3,000.

The CHAIRMAN. You say in this report almost 4,000?

Colonel HULL. Of course, I am speaking from memory.

The CHAIRMAN. At one time almost 4,000 men?

Colonel HULL. Yes, sir.

Mr. GARRETT. That is the cathedral at Manila?

PROPERTY DESTROYED BY ORDER OF UNITED STATES ARMY OFFICERS.

Mr. CRUMPACKER. Before we leave that matter, other church property was destroyed by order of the American military officers, was it not?

Colonel HULL. Oh, yes, sir; there are a few around over the island that were destroyed on the abandonment of the place, or something of that nature.

Mr. CRUMPACKER. And you have those segregated or separated. Are they mentioned in your report in the valuation of that property—is that determined?

Colonel HULL. Yes, sir.

Mr. CRUMPACKER. So that we can find those occasions and those incidents in your reports?

Colonel HULL. My impression is that you can in the supplemental report.

Mr. CRUMPACKER. What you regarded as the fair value of the property?

Colonel HULL. Yes, sir—Excuse me; I am wrong. Those items were not segregated in our supplemental report; only the total value is there set forth and the individual towns were not set forth. I do not remember whether I have my old notes on which those figures are based or not.

HOSTILITY OF INSURGENTS TO PRIESTHOOD.

Mr. CRUMPACKER. There is another matter. I understand that the insurgents in the islands of the archipelago were hostile to the priesthood largely; they blamed the priesthood largely for the civil and political oppression that they conceived they were laboring under. Did that result in the malicious destruction of any church property?

Colonel HULL. It resulted in the malicious destruction of church property in the years 1896 and 1897, during the time of the insurrection against Spain. It also doubtless resulted in some destruction of church property during the insurrection against our authority, but I should say that it was not universal—you would find a case of it here and there. There was no general policy, although there was the general policy of seizing church property for insurgent funds, wherever they could get any property of the church that they could turn into the insurgent treasury.

Mr. CRUMPACKER. In many cases it was property seized by the community in some way, was it not?

Colonel HULL. They afterwards did that; yes, sir.

MANNER OF PAYMENT OF CLAIMS, IF ALLOWED.

Mr. GARRETT. As I remember, in the incidental discussion of this matter in the last Congress, the question was submitted to Secretary Taft about the payment of these claims—in the event they were paid—as to whether they were to be paid to the church in a lump sum or whether the individual cases ought to be picked out and cases made. Is that a matter that you would like to discuss now?

Colonel HULL. I am perfectly willing to answer you. I should say emphatically as the cases were presented and gone over by the representative authority of the Catholic Church, that we should make payment to him of a lump sum and let them have the trouble of making the necessary divisions.

Mr. MCKINLAY. Where cases were presented by attorneys you would pay the attorneys representing the clients, would you not?

Colonel HULL. We would pay to the attorneys. I have not discussed that except that a question led me into it.

Mr. GARRETT. No attorney is interested in the Catholic Church claims, strictly speaking, is there?

Colonel HULL. No, sir; no attorney is represented in this \$363,000 claim.

Mr. GARRETT. Was your board convened under a special act or under the general laws?

Colonel HULL. Just under the general authority of the War Department to convene boards for any purpose to investigate any question, and under an act of Congress, as it was a claim against the United States, the president of the board has authority to administer an oath which is binding on the witness.

Mr. GARRETT. Are the reports unanimous throughout on these matters or is there a minority report?

Colonel HULL. There is no minority report. There are differences of individual opinions among the members of the board, but the report is as nearly unanimous as you could possibly get three men to be.

The CHAIRMAN. Your differences of opinion as to claims that you have allowed were principally concerning the amount you should allow, were they not?

Colonel HULL. Yes, sir; almost invariably after we got through with the evidence the three men would have divergent opinions. We would discuss it and adopt a sum in which all would acquiesce.

Mr. JONES. What is the aggregate of the findings in the friars claims?

Colonel HULL. I will have to refer to this report.

Mr. JONES. If you intend to take that matter up presently, we will let the question rest for the present.

The CHAIRMAN. Now take up the matter of the friars claims.

Mr. JONES. Mr. Chairman; is it the purpose of this committee to just inquire as to this one particular claim and not go through all of the claims?

The CHAIRMAN. Oh, no.

Mr. JONES. What will be the course of the committee?

The CHAIRMAN. I should say that it would take too long to go through the individual claims. Some of them are only for \$60 or \$80, or some other very small amount.

Colonel HULL. I will state to the committee that after the formal hearing I will be perfectly willing to stay here as long as any member of the committee desires to investigate any individual claim and go over it with him, and to show how we worked. There are a good many of the documents in Spanish which I can translate.

Mr. GARRETT. I want to ask this question: Is there any demand on the part of the individual churches or cathedrals for specific payments to be made to them?

Colonel HULL. No, sir; there is a specific demand from each church, but it is made by their representative head, the bishop of the church, and he has turned the papers over to the Papal delegate.

Mr. GARRETT. But there is really no difference of opinion as to how the payment of the Catholic claims shall be made—if they are made at all that they ought to be made direct to the head.

Colonel HULL. Yes, sir.

General EDWARDS. I think I can answer your question.

The CHAIRMAN. The committee would like to hear from you, General Edwards.

General EDWARDS. When I was in the Philippines the last time with the Secretary I found that the archbishop was not any too anxious to assume this responsibility, but it should be borne in mind that there is an American archbishop with four bishoprics under him. They are harmonious in any decision they might make, or if the money be turned over to the archbishop, and he is not at all keen to have this done; in other words, just as Colonel Hull has said, he does not care about adjudicating these matters with the different churches, although it strikes me that that is the most practicable way. Any lump award would be made to the archbishop and he would reconcile the various amounts according to the dioceses under him, the four dioceses presided over by the bishops, and therefore if they are willing to turn over the lump sum they will have to be willing to adjudicate those various claims. So there is no contention among the various churches; they are perfectly harmonious, under the church control over them, as to the acceptance of this money.

Colonel HULL. To make it a little clearer, so that there will be no question about it, it is not the archbishop of Manila that has jurisdiction of the financial affairs of the other dioceses. He is responsible only for the diocese of Manila, but the Papal delegate has charge of all of them. It is a question of canonical law.

Mr. JONES. That means, does it not, that it does not follow that this money will be used in the various parts of the island at all, but that it will be under the control of Rome?

Colonel HULL. I can answer that question, I think, very fully. I have talked with, I think, almost every priest in the island and with every bishop and I know the purpose and intention of the Papal delegate in case of payment. Any amount of money that is paid there will be spent in the individual localities in the reconstruction of church property.

General EDWARDS. There is no doubt about that.

Mr. MCKINLAY. Of course the main thing is that if this money is paid in a lump sum to the Papal delegate there will be no liability on the part of the United States.

Colonel HULL. None whatever.

Mr. JONES. I do not know what the intention of the archbishop may be, but I do know that when this matter was discussed before there was a question as to whether it would be expended there or expended anywhere that the Church of Rome desired to expend it.

Colonel HULL. I have no hesitancy in answering that question emphatically. I have no doubt but that any amount of money that may be received will be spent in the reconstruction of church property in the individual towns. For instance, in the town of Lobo, where if \$10,000 worth of damage was done, they may not spend \$10,000 there; they may spend \$5,000 there and \$5,000 in an adjoining town, but the funds will be devoted to rebuilding.

Mr. DAVIS. As I understand it, the lump sum that may be paid will be paid to the Catholic Church and the friars separately, and would not in any manner indicate how much was awarded by the General Government for any individual claim.

Colonel HULL. I do not think so.

Mr. DAVIS. It would perhaps help out the archbishop there if he knew what the committee of Congress had done with regard to segregating any of these claims.

Colonel HULL. That question was gone into thoroughly between the Papal delegate and the bishops and the board, and our report is in the nature of a lump sum.

Mr. DAVIS. It would be immaterial to them then how we arrived at this total?

Colonel HULL. To a certain extent. I desire to volunteer one piece of information which I think is no more than fair to the church, and that is this: That in case any payment is to be made for these claims by all means do it at the earliest practicable date. They have already suffered a great deal of damage in almost all these cases, since this report was made over a year ago, and that is continuing and growing from day to day. Prompt payment now is worth more than increased payment at a later date.

Mr. CRUMPACKER. In relation to the payee, I have the impression that the diocese was the ecclesiastical entity and that the bishop of the diocese was the business as well as the religious head of the property, and all the property.

Colonel HULL. You are right. It is in the bishop.

Mr. CRUMPACKER. And all suits brought concerning that property should be brought in the name of the bishop?

Colonel HULL. Yes, sir.

THE FOUR DIOCESES.

Mr. CRUMPACKER. There are four dioceses, as I understand, in the archipelago.

Colonel HULL. Five, sir; Vigan, Manila, Iloilo, Cebu, and Nueva Caceres.

Mr. CRUMPACKER. I suppose we would get acquittance likewise from each bishop?

Colonel HULL. That would be very easy, but in these damages each bishop has separately appointed the Papal delegate as his representative; he is their common head.

OWNERSHIP AND TITLE OF CHURCHES.

Mr. JONES. Now when this investigation was carried—or when it was begun, I will say—in whose possession were these various churches?

Colonel HULL. Do you mean the actual manual possession?

Mr. JONES. Yes; in the Roman Catholic Church or in the independent Catholic churches?

Colonel HULL. In most cases it was in the Roman Catholic Church. In some cases it was in the hands of communities, and in some cases in the hands of the independent churches.

Mr. JONES. At that time the litigation that had been instituted had not been decided?

Colonel HULL. No, sir.

Mr. JONES. I mean the case had not been decided?

Colonel HULL. No, sir; the board did not go into the details of the property as we anticipated the result which has taken place. All these properties have been taken into the custody of the church.

Mr. JONES. You say the board did anticipate it?

Colonel HULL. Yes, sir.

Mr. JONES. Why, because of the religious complexion of the court that was to pass upon the case?

Colonel HULL. The religious complexion of the board—

Mr. JONES. No; of the court, I say.

Colonel HULL. No, sir; but as a lawyer it was my judgment that the ultimate outcome of the case would be that way; it seemed to me that the title was in the church.

Mr. JONES. It is a matter of fact that many of those churches had been built by the labor and the contribution of the individual members of the church entirely, and that the Catholic Church as a whole did not contribute a dollar toward the construction of those churches, is it not?

Colonel HULL. Yes, sir; the same as the construction of church properties in this country.

Mr. JONES. And it is a fact that in many cases every single member of the church was present who had been in any way instrumental in building the church there.

Colonel HULL. I think so.

Mr. McKINLEY. Has that not already been passed upon by the supreme court of the islands?

Colonel HULL. I think so.

Mr. JONES. And yet you say the board anticipated that even in this case it would be held that the Roman Catholic Church owned the property, when these people had built it by their own contributions?

Colonel HULL. Yes, sir.

The CHAIRMAN. It has been so held. The supreme court of the islands in a case that was brought before it rendered an opinion that it was owned by the Catholic Church.

PERSONNEL AND OPINION OF PHILIPPINE SUPREME COURT.

The CHAIRMAN. Of how many judges does that court consist, seven?

Colonel HULL. Yes, sir; seven.

The CHAIRMAN. Three of whom, including the chief justice, are Filipinos?

Colonel HULL. Four of whom now—three at that time—including the chief justice, are Filipinos.

General EDWARDS. No; the nomination of Mr. Araneta went over. Judge Tracy declined appointment to the Philippine Commission, so both appointments failed.

Mr. GARRETT. At the time of this opinion there were three?

Colonel HULL. Yes, sir; four Americans.

Mr. JONES. And the majority of the court were Roman Catholics, were they?

Colonel HULL. I think there is only one American judge who is a Catholic, but I am not sure.

Mr. MADISON. Was the opinion of the court unanimous?

Colonel HULL. I do not recall; I think there was one dissenting opinion.

The CHAIRMAN. We have the opinion. As I understand it there was one who did not agree in the reasoning of the majority opinion although he did in the conclusion. It is my understanding that the court was unanimous as to the title being in the Catholic Church.

Colonel HULL. Owing to my traveling so much on military business I have not been able to keep up with the decisions of the supreme court of the Philippine Islands.

Mr. CRUMPACKER. We ought to have that opinion printed in the record.

Mr. GARRETT. Mr. Secretary Taft referred to that opinion.

The CHAIRMAN. I desire to say for the benefit of the gentlemen who were not members of this committee during the last Congress that we had this subject before us at the short session ending last March. The documents which are now before Colonel Hull had inadvertently been returned to the Philippine Islands, and we could not get them here before the session ended. We also wanted to get the opinions of the supreme court of the islands, which have just been mentioned. They did not arrive, my recollection is, until a week or two before adjournment, so that there was no opportunity for the committee really to consider this subject. As I have said, it is my understanding that while one of the justices does not agree with the reasoning of the majority opinion, he does nevertheless concur in the conclusion.

CLAIM OF CIVIL AUTHORITIES.

Colonel HULL. Mr. Jones, I think you will find that in the claim of Nueva Caceres, the original papers submitted to the board show how the civil authorities, the church authorities, and the military authorities regarded the church properties which had partly been built out of Government funds. That question arose in case No. 1, and also in the case of Iloilo, Vigan, and Neuva Caceres.

Mr. CRUMPACKER. Did the civil authorities put in a claim?

Colonel HULL. The local authorities put in a claim that when the military authorities should leave the archbishop's palace it should be turned over to the local government instead of the church author-

ities. The question was very carefully considered by Governor Taft and the full papers are before you.

Mr. CRUMPACKER. Is that the only case in which the civil authorities made claim?

Colonel HULL. It is the only one that I have knowledge where the local or provincial authorities made claim. This is slightly different, too, from the other church properties. This building was built by contributions of one-third from the contribution of the faithful, one-third from the "fondos locales," and one-third from the general treasury.

Mr. GARRETT. What is fondos locales?

Colonel HULL. Under the Spanish régime it was the local funds kept in the central treasury.

DATE OF CONSTRUCTION OF BUILDINGS.

Mr. McKINLAY. Is it not a fact that some of those buildings were constructed a couple of hundred years ago?

Colonel HULL. Yes, sir; the Augustine convent in Manila was constructed in 1607.

Mr. McKINLAY. So that the present population had nothing to do with it and contributed nothing to it?

Colonel HULL. Certainly not. Most of the churches are quite old.

Mr. GARRETT. Those churches are constructed mostly of stone, are they not?

Colonel HULL. Yes, sir; one of the peculiar features of the situation is that some of the largest churches are in the smallest towns. Take the town of Oton, it is a town of no importance and the church there is large enough for a city of 200,000 inhabitants.

CHURCHES CONSTRUCTED BY WHOM?

Mr. McKINLAY. So that none of the present population could claim that his personal contribution had helped to construct the building.

Colonel HULL. In some cases there is some shifting and changing of conditions.

Mr. McKINLAY. That would be very rare would it not?

Colonel HULL. I would not like to speak offhand as to that, but I should say it would be the exception and not the rule.

The CHAIRMAN. You have just said that in some cases conditions were changing and shifting, etc. Would not this fact afford an argument for the turning of this money over in a lump sum to be disposed of by the church according to present conditions and needs.

Colonel HULL. I think it would be more beneficial to the Government if the money was put into the places where it would do the most good rather than in a place where the case arose.

Mr. MADISON. These people are all members of the Roman Catholic Church and obey its ecclesiastical law and in no case would rebel against it, and as far as ecclesiastical matters are concerned it is in all respects under the government of the church and the recognized ecclesiastical authority of the bishops and archbishops.

Colonel HULL. You mean the ones we are dealing with here?

INDEPENDENT PHILIPPINE CATHOLIC CHURCH.

Mr. MADISON. Yes, sir; all these. Is there an independent church there?

Mr. JONES. Yes, there is an independent church.

Mr. MADISON. I just asked for information. I am a new man here.

Colonel HULL. I think I know what you want to ascertain. There are no claims presented here by the independent clergy or church. All of these claims are presented by the Catholic Church proper and a payment to the head would bind all their subordinates, because they are all acting in harmony. Is that the information you desired?

Mr. MADISON. Yes, sir.

Mr. JONES. That is an independent church in the Philippine Islands, an independent Catholic church, and there has been a controversy between the independent church headed by Archbishop Aglipay and the Roman Catholic Church as to the ownership of all this property.

Colonel HULL. Not all of it, just part of it.

Mr. JONES. Part of this property, most of it?

Colonel HULL. No; I should say the minority portion of the churches.

Mr. JONES. I suppose it was a larger part than that. What you mean to say in reply to this question is that the independent church has not put in any claim for damages; that it is the Church of Rome that has put in a claim for damages to this property, but there has been a question between the two wings of the church as to the ownership of the property.

Mr. MADISON. But that has been concluded now, as I understand it, by the civil court, and the question of the title to that property has been decided in favor of that organization to which you have made these awards?

Colonel HULL. Yes, sir.

Mr. HELM. Maybe you have stated it, but I did not catch it, and I would like to ask now in whom is the title to the property vested?

TITLE TO CHURCH PROPERTY.

Colonel HULL. In the bishop of the dioceses.

Mr. HELM. He is the title holder of all the property, is he?

Colonel HULL. Yes, sir.

Mr. HULL. All the church property

Mr. DAVIS. The independent churches and others. Is it now so decided?

Colonel HULL. There are some shacks of independent churches that he does not claim title to.

Mr. DAVIS. Well, all that was contained in this award included those independent churches as well as the regular Roman Catholic Church, but it is now decided by the supreme court that all of it belongs to the Roman Catholic Church proper.

Mr. CRUMPACKER. All the property that was formerly vested in the bishop in trust for the Roman Catholic Church, I understand, was; subsequently the independent church claimed that it should have a portion of that property.

Colonel HULL. Yes, sir.

Mr. CRUMPACKER. And the court held that that property, having been originally in the archbishop in trust for the church, that the scism in the church did not transfer the title, but that it remained where it was originally, and the independents had no part of it. Of course any church property that they might acquire and construct on their own account belongs to them. They are Catholics likewise, are they not?

ATTITUDE OF INDEPENDENT CHURCH.

Mr. DAVIS. Have you any opinion tending to show whether or not the independents are satisfied with the decision?

Colonel HULL. We paid absolutely no attention to the independent class of churches at all.

Mr. DAVIS. I thought it might involve the Government of the United States.

Colonel HULL. No, sir.

Mr. GARRETT. As to this division, did that occur before the insurrection—before we had any interest—or has it occurred since?

Colonel HULL. It has all occurred since the origin of these claims.

Mr. GARRETT. You say it has occurred since the origin of these claims?

Colonel HULL. Yes, sir.

Mr. GARRETT. Let me ask you this, if you do not mind stating, is there any idea, and if so, have you anything to base it on, that these claims constitute any part for the motive for that?

Colonel HULL. I should say none whatsoever. Of course that is a personal opinion. The scism started after Aglipay surrendered after the breakdown of the insurrection. These claims arose during the insurrection; the scism was started after the insurrection had been quelled.

Mr. GARRETT. After the breaking out?

Colonel HULL. After the insurrection. I will state for the information of the committee that Aglipay was at one time administrator of the church property at Vigan. He had trouble with the church authorities, was unfrocked, and became an insurgent leader in the northern province. He committed a number of atrocities and was one of the last men to surrender.

The CHAIRMAN. When did he first claim to be an archbishop?

Colonel HULL. Some little time after he came back, after he had surrendered, and after the breaking down of the insurrection; the actual time I do not now recall.

Mr. CRUMPACKER. Long after the claim now pending originated.

Colonel HULL. Yes, sir—not long after, but afterwards.

NUMBER OF INDIVIDUAL CLAIMS.

Mr. JONES. I do not understand that that question is involved at all in this inquiry. I would like to know, Mr. Chairman, whether this is to conclude the hearing on these claims. I realize that it would take a great deal of time to go through all of them and I do not suppose the committee is going to undertake that, but for one I would like to have some information as to the larger claims and my reason for that is, I will state very frankly to the chairman and to the committee, that we were engaged some years ago, as you know,

in investigating the friar lands, and Congress appropriated—or, rather, Congress provided for the payment of those lands. For one, I am absolutely convinced that we paid two or three times as much for them as they were worth, and I do not want to be a party myself to paying—if we are going to pay at all for these claims—more than the committee thinks after thorough investigation is due the church. Much of this land that we bought from the friars—probably something like \$25 an acre—it turns out now that at least half of it is not as valuable as the public land out there, and we have not been able to dispose of them at all at anything like what the government paid for them—I mean what the Philippine government paid for them—and I do not care to see that repeated.

Mr. GARRETT. Have you a statement as to how many of the individual claims there are?

Colonel HULL. There are 466 individual claims.

The CHAIRMAN. I desire to inform the committee that at the last session of Congress there was printed another pamphlet, copies of which ought to be before them this morning. I am surprised that they are not. It is called the "Proceedings of the Board on Church Claims," the board of which Colonel Hull was president.

Mr. WASHBURN. We have all got it.

The CHAIRMAN. That is not the one to which I refer. On the second page there begins an itemized statement showing each claim by number, the amount originally asked for, the character of the claim, and the amount of the award. For instance here is one that cuts a claim down from three thousand two hundred and odd dollars to \$900.

Colonel HULL. I can take the exhibits and show as a rule the size of the building and the character of its construction.

The CHAIRMAN. I think that it would be well for each member of the committee to have a copy of this document. It was printed during the last session. I will order a reprint. It contains the itemized report of the board, and if the members of the committee will study it they will see that some of the claims are comparatively small and the awards insignificant in amount. There is one award for \$12.50. We do not want to go through all of them, but the important claims can be taken up.

Mr. JONES. I think that is a good suggestion. I think each member should be furnished with a copy of that report and have Colonel Hull, if he will be kind enough, to come before us at another date when we could ask him some questions with regard to the larger claims.

The CHAIRMAN. I had the report printed at the last session for that purpose, but we were never able to consider it because of the absence of the original testimony and documents now before us.

Mr. DAVIS. The report gives the items.

CATHEDRAL OF MANILA.

The CHAIRMAN. Yes. Gentlemen, let me read to you one of the items. Here is one on page 2, concerning the cathedral of Manila, the damages done and the character of the claim, and the award:

No. 1, cathedral of Manila. Amount claimed, ₱17,818.42.

The present cathedral was built between the years 1870 and 1879, upon plans approved by the minister of colonies at Madrid, and from funds contributed

one-third by the faithful, one-third by the general island treasury, and one-third from the local funds.

The board is informed by the church authorities that the title to the land on which this building is located is in the church. The bureau of archives reports that the antiquity of the archbishopric of Manila, which was founded in 1580, makes it impossible to determine the actual ownership of this land. This is one of the numerous buildings in the islands, known as buildings of the state.

The question as to the title has never been decided, although it was considered by Governor Taft, in 1903, in relation to the archbishop's palace at Nueva Caceres, in which case he held that it would not be advisable to come to a definite conclusion administratively, but would refer the question to the courts. As the only possible claimants can be the United States and the Catholic Church, no suit has been instituted, and the clergy is now in peaceful possession of the property.

The cathedral was occupied immediately after the capitulation of the city of Manila as barracks for prisoners of war, both Spanish and native, Spanish and native troops being placed therein. It is impossible to learn whether this was done by an agreement between the Spanish general and the archbishop, but there can be no question that it was sanctioned by the United States military authorities, as after the outbreak of hostilities, on the 4th of February, guards were placed over the native prisoners of war so that they could not escape and join the insurgents.

The building received the hardest possible kind of treatment, due probably to the large number of prisoners using it, sometimes aggregating almost 4,000 men.

In view of the fact that the question has been considered by Colonel Crowder, General Otis, General Davis, and the present Secretary of War, we expressed no opinion as to the title, but recommend that rental at the rate of ₱1,500 per month for seven months, amounting to ₱10,500, and damages to woodwork, etc., ₱1,150, total ₱11,650, be paid.

(Exhibits 1-8.)

No. 2, Ateneo of Manila, belonging to the Society of Jesus. Claim for rental and damages, ₱7,500.

This building was occupied by a large number of officers and enlisted men of the Spanish prisoners of war for a period of seven months. We recommend payment of rental at ₱900 per month for seven months, ₱6,300. No damages.

(Exhibits 9-12.)

No. 3, Order of Mission of the Jesuits of Santa Ana, Rizal. Claim for rental and damages, ₱500.

This building was occupied by the Washington Volunteers for a short time, and it is recommended that payment of rental amounting to ₱400 be made. No damages.

(Exhibit 13.)

Mr. DAVIS. I would like to ask Colonel Hull if he can give the committee any further information in detail as to either one of these cases.

Colonel HULL. I can give you the full details.

Mr. DAVIS. You have the documents before you, have you?

Colonel HULL. Yes, sir; and I have personal mental pictures of the buildings and the condition that existed there.

ATENE0 OF MANILA.

The CHAIRMAN. Take No. 2 and give the facts as to it.

Colonel HULL. That is a very large boys' school; it is right north of the archbishop's house and virtually adjoining it. They have a large basement and the upstairs they use for schoolrooms, and part of it is a museum of the city of Manila. It is a large, handsome, well-constructed building. The main portion used there downstairs, the basement, where they had cots underneath the wings, covers an immense territory, virtually a block. The upstairs portion was used for officers, for the noncommissioned officers. The woodwork was changed

and the school desks were piled up and thrown in a heap so they could get the people into the building.

The CHAIRMAN. Get the soldiers in, you mean?

Colonel HULL. Yes, sir; the Spanish prisoners of war. That school had to be discontinued, or mainly discontinued, and the Jesuits asked General Hughes, the provost-marshal, to remove the prisoners so they could start to school again, and he turned it over as soon as possible, so that the cause of education could go on. I have been in the building repeatedly, and I know I have examined almost every room.

The CHAIRMAN. Have you any doubt now that the award "No damages; for rental, 6,300 pesos." is a fair one?

Colonel HULL. I have no doubt that the Jesuits, if you would offer that rent to them for seven months or seven years to-day would not accept it at that rate.

The CHAIRMAN. In other words, you think that the Government is not doing any more than justice in making that award?

Colonel HULL. Yes, sir. What are the exhibit numbers on that case No. 2?

The CHAIRMAN. Exhibits 9 to 12.

CHURCH AND CONVENT AT PASAY.

The CHAIRMAN. Let me read another item to show the character of work done by the board of which Colonel Hull was president:

No. 5, church and convent at Pasay (Pineba), Rizal. Claim for rent and damages, ₱26,426.50.

This property has been personally examined, and payment of rental for the church, amounting to ₱850; rental for the convent, amounting to ₱2,700, and damages to both, amounting to ₱1,000, is recommended; total of ₱4,550.

We have disregarded the claim for rent for occupation during the last eight months, as it was occupied by Company H, native police.

(Exhibits 18-20.)

In other words, the cut is from \$13,213.25 to \$2,275. You are familiar with the facts of that case, are you?

Colonel HULL. Yes, sir.

The CHAIRMAN. You made a personal inspection, did you?

Colonel HULL. Yes, sir.

The CHAIRMAN. And the board also?

Colonel HULL. In the company of Father Carnana, the Papal delegate's private secretary, who went with me that day and made the inspection.

Mr. GARRETT. Why did they put those claims up so; what elements did they include? Did they include any elements which you excluded?

CLAIMS FOR SACRED ORNAMENTS.

Colonel HULL. Yes, sir; in this case they claimed a great deal. My recollection is that there they claimed quite a number of sacred ornaments which I thought was more than any church in a town of that character would have in its possession, especially after the insurgents had been in occupation of the premises for a long time before we came and used that place. That was on one part of the line. It was used for some time as a hospital for our troops, and the damages

I thought were slightly excessive and that the priest there had made rather an enlarged claim, especially in view of the nature of the ornaments. What exhibits are those, Mr. Chairman?

The CHAIRMAN. They are exhibits from 18 to 20.

Colonel HULL. There is also an old convento there which he claimed had been entirely destroyed. The back part of the house was rotten; the walls were poor, as well as the woodwork. We went around and looked at it, and he claimed that that had all been destroyed by the troops, but it bore the evidence of destruction by age to a great degree.

Mr. HELM. How old a building is this?

Colonel HULL. In this case of Pasay it is probably an old, old church, 150 or 200 years old. The convento is probably fifty years old.

Mr. HELM. What would be the reasonable value of a piece of property of that kind—the market value?

Colonel HULL. That is a very difficult question to answer. We discuss the question as to values of the property in the end portion of this report, and it was almost impossible to judge of the individual value of the buildings because they were erected so long ago.

Mr. JONES. For special uses, I suppose?

Colonel HULL. For special uses; they have no mercantile value and the only possible value that could be put upon it would be how much it would cost to erect that building now.

Mr. HELM. How does the value of property there, city property, compare—this was in the city was it?

Colonel HULL. It was in a little village near Manila, about 10 miles away.

Mr. HELM. How does the value of real estate there compare with similar property in similar cities in America?

Colonel HULL. Oh, it is less.

Mr. HELM. How much less?

CHURCH AT PASAY.

Colonel HULL. Well, you take Pasay, for instance. That church is about 10 miles from the city of Manila. Manila is a city of 300,000 inhabitants. Pasay is building up; it has quite a residential portion along the beach, and the value of the city property has increased probably two or three fold since our arrival in the city of Manila. I should imagine you could buy a little plot of land there—

Mr. HELM. I am speaking of improved property in the city.

Colonel HULL. It is almost impossible to compare conditions in the Philippines at any point with conditions in this country; they are local, you will realize. That was about as far as we went that day, Mr. Jones. It is one of those towns near the city of Manila that you reach on a street car.

The CHAIRMAN. We have about reached the hour of adjournment. Colonel Hull, I will ask you this question: Are you a native of Iowa?

Colonel HULL. Yes, sir.

The CHAIRMAN. You are a son of Representative Hull, the chairman of the Committee on Military Affairs of the House of Representatives, are you?

Colonel HULL. Yes, sir.

HIGH CHARACTER OF PHILIPPINE SUPREME COURT.

The **CHAIRMAN**. I desire to say a word about the supreme court of the islands. Some of the new members of the committee may not have had an opportunity to inform themselves concerning that court. Our people are apt to express doubt and distrust of its character and qualifications. Secretary Taft, while governor-general of the islands, testified before this committee in 1902, during the preparation of the Philippine civil government act, and among other things said that the supreme court of the Philippine Islands, which then consisted, as it now does, of seven members, four Americans and three, including the chief justice, native Filipinos, would compare favorably with any supreme court in the United States.

Mr. DAVIS. Any State supreme court?

The **CHAIRMAN**. Yes, any State supreme court. Chief Justice Arellano has been since given a decree of LL. D. by Yale.

Mr. GARRETT. Do I understand that we will have these opinions of that court published in this hearing?

The **CHAIRMAN**. Yes, sir. I want to say this before we adjourn. Secretary Taft promised me this morning that he would come here on Monday. He is very desirous of being heard on this proposition, with which he is thoroughly familiar. I hope that the members of the committee will be here as promptly as possible at 10 o'clock next Monday morning. Colonel Hull, we would like to have you here at that time. We shall reprint your itemized report so that the committee may question you upon it.

Colonel HULL. I am subject to the desires of the committee or any individual member of it. If there is any individual member between now and next Monday who wants to spend any time in familiarizing himself with these papers I am perfectly willing to await his pleasure at any time and place.

The **CHAIRMAN**. We will meet at 10 o'clock Monday to hear Secretary Taft.

The committee thereupon adjourned to meet on Monday, January 20, 1908, at 10 o'clock a. m.



PROCEEDINGS BOARD ON CHURCH CLAIMS.

HEADQUARTERS PHILIPPINES DIVISION,
Manila, P. I., January 15, 1906.

Proceedings of a board of officers convened at Manila, P. I., by virtue of the following order:

SPECIAL ORDERS, }
No. 175.

HEADQUARTERS PHILIPPINES DIVISION,
Manila, P. I., July 31, 1905.

[Extract.]

* * * * *
3. In compliance with instructions of the Secretary of War dated June 12, 1905, a board of officers, to be known as the "Board on Church Claims," is hereby convened to meet at these headquarters at 9 o'clock a. m., August 1, 1905, to investigate and report upon such claims as may be submitted to it from these headquarters.

Detail for the Board: Lieut. Col. John A. Hull, judge-advocate; Lieut. Col. Alexander O. Brodie, military secretary; Maj. William W. Gibson, General Staff.

The board, in the performance of the duties imposed on it, will be governed by instructions from these headquarters.

* * * * *
By command of Major-General Corbin:

JOHN G. D. KNIGHT,
Lieutenant-Colonel, General Staff, Chief of Staff.

Official.

W. A. SIMPSON,
Military Secretary.

HEADQUARTERS PHILIPPINES DIVISION,
Manila, P. I., August 1, 1905.

The board met, pursuant to the foregoing order, at 9 o'clock a. m.

Present: Lieut. Col. John A. Hull, judge-advocate; Lieut. Col. Alexander O. Brodie, military secretary; Maj. William W. Gibson, General Staff.

The order convening the board, and the instructions, consisting of an official copy of the opinion of the Judge-Advocate-General, of June 12, 1905, with the action of the Secretary of War thereon, were then read. Copy of instructions hereunto attached, marked "A."

The board then commenced the consideration of the claims heretofore filed by Monseigneur A. A. Agius, archbishop of Palmyra, papal delegate. The president of the board was directed to notify the papal delegate that the board would meet each morning at 9 o'clock for the consideration of his claim, and that he could be present in person, or by such representatives as he might see fit, at the sessions of the board.

The board thereupon adjourned.

WILLIAM W. GIBSON,
Major, General Staff.

HEADQUARTERS PHILIPPINES DIVISION,
Manila, P. I., August 31, 1905.

The board met pursuant to adjournment.

Present: All the members.

A copy of a letter written on August 3 to the military secretary requesting instructions is attached, marked "B."

During the past month the board at its daily sessions has completed the following cases:

[All sums are expressed in Conant.]

No. 1. Cathedral of Manila. Amount claimed ₱17,818.42.

The present cathedral was built between the years 1870 and 1879, upon plans approved by the minister of colonies at Madrid, and from funds contributed one-third by the faithful, one-third by the general island treasury, and one-third from the local funds.

The board is informed by the church authorities that the title to the land on which this building is located is in the church. The bureau of archives reports that the antiquity of the archbishopric of Manila, which was founded in 1580, makes it impossible to determine the actual ownership of this land. This is one of the numerous buildings in the islands, known as buildings of the state.

The question as to the title has never been decided, although it was considered by Governor Taft, in 1903, in relation to the archbishop's palace at Nueva Caceres, in which case he held that it would not be advisable to come to a definite conclusion administratively, but would refer the question to the courts. As the only possible claimants can be the United States and the Catholic Church, no suit has been instituted, and the clergy is now in peaceful possession of the property.

The cathedral was occupied immediately after the capitulation of the city of Manila, as barracks for prisoners of war, both Spanish and native, Spanish and native troops being placed therein. It is impossible to learn whether this was done by an agreement between the Spanish general and the archbishop, but there can be no question that it was sanctioned by the United States military authorities, as, after the outbreak of hostilities on the 4th of February, guards were placed over the native prisoners of war so that they could not escape and join the insurgents.

The building received the hardest possible kind of treatment, due probably to the large number of prisoners using it, sometimes aggregating almost 4,000 men.

In view of the fact that the question has been considered by Colonel Crowder, General Otis, General Davis, and the present Secretary of War, we expressed no opinion as to the title, but recommend that rental at the rate of ₱1,500 per month for seven months, amounting to ₱10,500, and damages to woodwork, etc., ₱1,150, total ₱11,650, be paid.

(Exhibits 1-8.)

No. 2. Ateneo, of Manila, belonging to the Society of Jesus. Claim for rental and damages, ₱7,500.

This building was occupied by a large number of officers and enlisted men of the Spanish prisoners of war for a period of seven months. We recommend payment of rental at ₱900 per month for seven months, ₱6,300. No damages.

(Exhibits 9-12.)

No. 3. Order of Mission of the Jesuits of Santa Ana, Rizal. Claim for rental and damages, ₱500.

This building was occupied by the Washington Volunteers for a short time, and it is recommended that payment of rental amounting to ₱400 be made. No damages.

(Exhibit 13.)

No. 4. Malate convent, Manila. Claim for rental and damages, ₱7,650.

This building was occupied from about the 15th of August by two batteries of artillery, and subsequently by Company B, Engineers. We recommend payment only of rental, amounting to ₱2,200, and that damages be not favorably considered; total, ₱2,200.

(Exhibits 14-17.)

- No. 5. Church and convent at Pasay (Pineba), Rizal. Claim for rent and damages, ₱26,426.50.

This property has been personally examined, and payment of rental for the church, amounting to ₱850, rental for the convent, amounting to ₱2,700, and damages to both, amounting to ₱1,000, is recommended; total of ₱4,550.

We have disregarded the claim for rent for occupation during the last eight months, as it was occupied by Company H, native police.

(Exhibits 18-20.)

- No. 6. Claim for rental and damages to church and convent at Paranaque, Rizal, amounting to ₱66,396.67.

The church and convent at this place were greatly injured by the cannonading of the U. S. Monitor *Monadnock* during active hostilities, and we are informed that they were also injured during the hostilities incident to the insurrection of 1896 and 1897.

Damages done have been disregarded, as being an incident of warfare, and it is recommended that payment of rental for the church of ₱2,100, for the convent of ₱4,206, and damages to both, amounting to ₱4,000, be made; a total of ₱10,306.

(Exhibits 21-22.)

- No. 7. Rental and damages to convent and church at San Pedro Macati, Rizal, with occupation of the mission at Calicut, amounting to ₱8,219.

We recommend payment for rental of convent, ₱120; of the church, ₱180, and of the mission, ₱140, together with damages to the church of ₱1,700, and convent of ₱800; a total of ₱2,940.

(Exhibits 23-25.)

- No. 8. Baganga, Mindanao. Amount claimed for rental and damages, ₱825.35.

We recommend the payment of ₱765 as rental. No damages.

(Exhibits 26-27.)

- No. 9. Caraga, Mindanao. Claim for rental and damages amounting to ₱115.34.

We recommend the payment of ₱90 as rental. No damages.

(Exhibits 28-29.)

- No. 10. Agutaya, Cuyo. Claim for damages to convent amounting to ₱60.

We recommend that this sum be allowed.

(Exhibit 30.)

- No. 11. Puerto Princesa, Paragua. Claim for rental and damages amounting to ₱700.

We recommend that ₱600 be allowed for rental. No damages.

(Exhibits 31-32.)

- No. 12. Kalibo, Capiz. Claim for ₱6,426.25 and ₱21,903.

The destruction of his property was an incident of war, and it is recommended that nothing be paid therefor.

(Exhibit 33.)

- No. 13. Madalog, Capiz. Claim for damages, ₱57.50.

Bishop Rooker has abandoned this claim in view of the action taken on the Agutaya claim (No. 10).

(Exhibit 34.)

- No. 14. San Felipe Neri, Rizal. Rental and damages to church and convent, amounting to ₱19,645.96.

We recommend payment of rent amounting to ₱1,343.96, and damages to the floor in the church amounting to ₱270; total, ₱1,613.96.

(Exhibits 35-36.)

- No. 15. Dingle, Iloilo. Claim for damages to church and convent amounting to ₱3,390.

As the destruction was an incident of war, it is recommended that nothing be paid.

(Exhibit 37.)

- No. 16. Pasig, Rizal. Claim for rental and damages to the church and convent and to the chapels in the suburbs amounting to ₱62,680.10.

It is recommended that ₱4,075 be paid as rental for the church and convent and storerooms, and that damages to the church and convent in the sum of ₱3,000 be paid. It is recommended that no damages be paid for the destruction of the missions in the suburbs, the same being an incident of warfare. Total, ₱7,075.

(Exhibits 38-39.)

- No. 17. Imus, Cavite. Claims amounting to ₱4,210.

We recommend allowance of rental for convent at ₱60 per month, thirty and one-half months; total, ₱1,830. No damages.

(Exhibits 40-41.)

- No. 18. Naic, Cavite. Claim for rental and damages amounting to ₱3,007.90.
We recommend payment of rental claimed, ₱2,687.90. No damages.
(Exhibits 42-43.)
- No. 19. Silang, Cavite. Claims for rental and damages amounting to ₱5,460.
We recommended allowance of rental at ₱150 per month for twenty-nine months, ₱4,350, and damages, ₱500; total, ₱4,850.
(Exhibits 44-46.)
- No. 20. Las Marinas, Cavite. Claims for rental and damages amounting to ₱2,980.
We recommend payment of rental at ₱30 per month, thirty-eight months, ₱1,140, and damages, ₱200; total, ₱1,340.
(Exhibits 47-48.)
- No. 21. Bulacan, Bulacan. Claims for rental and damages amounting to ₱10,200.
We recommend payment of rental, ₱5,400, and damages, ₱1,700; total, ₱7,100.
(Exhibits 49-50.)
- No. 22. Bustos, Bulacan. Claims for rental and damages amounting to ₱672.
We recommend payment of ₱75 as rental. No damages.
(Exhibits 51-52.)
- No. 23. San Ildefonso, Bulacan. Claims for rental and damages amounting to ₱925.
We recommend payment of rental, ₱125; damages, ₱300; total, ₱425.
(Exhibits 53-54.)
- No. 24. San Miguel, Bulacan. Claims for rental and damages amounting to ₱3,800.
We recommend payment of rental, ₱80 per month, for thirty months, ₱2,400, and damages, ₱800; total, ₱3,200.
(Exhibits 55-56.)
- No. 25. Santa Isabel, Bulacan. Claims for rental and damages amounting to ₱1,017.50.
We recommend payment of ₱25 as rental. No damages.
(Exhibits 57-58.)
- No. 26. Santa Maria, Bulacan. Claims for rental and damages amounting to ₱96,580.50.
We recommend payment of ₱520 as rental. No damages.
(Exhibits 59-60.)
- No. 27. Baliuag, Bulacan. Claims for rental and damages, ₱6,953.33.
We recommend payment of rental, ₱3,700; damages, ₱1,175; total, ₱4,875.
(Exhibits 61-62.)
- No. 28. Binangonan, Rizal. Claim for rental and damages to convent and church amounting to ₱7,475.50.
We recommend payment of rental at ₱40 per month for forty-five months, ₱1,800. No damages.
(Exhibits 63-65.)
- No. 29. Zamboanga, Mindanao. Claim for rental and damages to church and convent amounting to ₱850.
We recommend payment of ₱600 rental. No damages.
(Exhibits 66-67.)
- No. 30. Siniloan, Laguna. Claim for rental and damages to convent and church amounting to ₱7,461.
We recommend payment of rental, twenty-six and one-half months, at ₱40 per month, ₱1,060, and damages amounting to ₱1,500; total, ₱2,560.
(Exhibits 68-69.)
- No. 31. Mavito, Laguna. Claim for rental and damages to church and convent amounting to ₱6,445.75.
We recommend payment of rental, nineteen months, at ₱40 per month, ₱760, and damages, ₱1,000; total, ₱1,760.
(Exhibits 70-71.)
- No. 32. Jolo, Jolo. Claim for rental of church and convent amounting to ₱1,998.
We recommend payment of rent, church, twenty-five months, at ₱50 per month, ₱1,250; convent, twenty-four and one-half months, at ₱20 per month, ₱492; total, ₱1,742. No damages.
(Exhibits 72-74.)

- No. 33. Atimonan, Tayabas. Claim for rental and damages to convent amounting to ₱7,700.
We recommend payment of rent, thirty-eight months, at ₱150 per month, ₱5,700; damages, ₱400; total, ₱6,100.
(Exhibits 75-77.)
- No. 34. Palanqui, Albay. Claim for rental and damages to convent amounting to ₱1,050.
We recommend payment of rent, ₱400; damages, ₱100; total, ₱500.
(Exhibits 78-80.)
- No. 35. Camaligan, Ambos Camarines. Claim rental of convent amounting to ₱750.
We recommend payment of rent, ₱500. No damages.
(Exhibit 81.)
- No. 36. Legaspi, Albay. Claim for rental and damage to church and convent amounting to ₱18,897.
We recommend payment of rent, church, ₱500; convent, forty-eight months, at ₱150 per month, ₱7,200; damages, ₱2,000; total, ₱9,700.
(Exhibits 82-85.)
- No. 37. Lucena, Tayabas. Claim for rental and damages to convent amounting to ₱8,400.
We recommend payment of rent, ₱1,600; damages, ₱200; total, ₱1,800.
(Exhibits 86-89.)
- No. 38. Camalig, Albay. Claim for rental and damages to church and convent amounting to ₱5,124.
We recommend payment of rent, ₱700; damages, ₱400; total, ₱1,100.
(Exhibits 90-92.)
- No. 39. San Fernando, Ambos Camarines. Claim for rental and damages to church and convent amounting to ₱20,475.
We recommend payment of rent, ₱50, and that no damages be paid, as the destruction of these buildings was an incident of war.
(Exhibits 93-95.)
- No. 40. Lucban, Tayabas. Claim for rental and damage to convent amounting to ₱5,981.
We recommend payment of rent, thirty months, at ₱80 per month, ₱2,400; damages, ₱1,020; total, ₱3,420.
(Exhibits 96-97.)
- No. 41. Baao, Ambos Camarines. Claim for rental and damages to convent amounting to ₱8,618.
We recommend payment of rent, ₱2,100; damages, ₱175; total, ₱2,275.
(Exhibits 98-100.)
- No. 42. Nabua, Ambos Camarines. Claim for rental and damages to convent amounting to ₱10,527.
We recommend payment of rent, twenty-four months, at ₱200 per month, ₱4,800; damages, ₱137; total, ₱4,937.
(Exhibits 101-103.)
- No. 43. Buhí, Ambos Camarines. Claim for rental and damages to church and convent amounting to ₱5,762.
We recommend payment of rent, ₱2,500; damages, ₱77; total, ₱2,577.
(Exhibits 104-105.)
- No. 44. Libmanan, Ambos Camarines. Claim for rental of church and convent, amounting to ₱9,000.
We recommend payment of rent, ₱6,000. No damages.
(Exhibits 106-107.)
- No. 45. Daet, Ambos Camarines. Claim for rental and damages to church and convent, amounting to ₱3,355.
We recommend payment of rent, ₱2,200. No damages.
(Exhibits 108-109.)
- No. 46. Libon, Albay. Claim for rental and damages to convent, amounting to ₱1,440.
We recommend payment of rent, ₱240; damages, ₱200; total, ₱440.
(Exhibits 110-112.)
- No. 47. Sorsogon, Sorsogon. Claim for rental and damages to church and convent, amounting to ₱8,980.
We recommend payment of rent, 54 months, at ₱50 per month, ₱2,700; damages, ₱665; total, ₱3,365.
(Exhibits 113-116.)

No. 48. Unisan Tayabas. Claim for rental and damages to convent, amounting to ₱880.

We recommend payment of rent, eleven months, at ₱40 per month, ₱440. No damages.

(Exhibits 117-119.)

No. 49. Sariaya, Tayabas. Claim for rental of convent, amounting to ₱2,500.

We recommend that this sum be paid. No damages.

(Exhibits 120-121.)

No. 50. Bato, Ambos Camarines. Claim for damages to convent, amounting to ₱240.

We recommend that this sum be paid. No damages.

(Exhibits 122-123.)

No. 51. Bulan, Sorsogon. Claim for rental and damages to convent, amounting to ₱18,780.

We recommend payment of rent, forty-five months, at ₱120 per month, ₱5,400; damages, ₱1,000; total, ₱6,400.

(Exhibits 124-128.)

No. 52. Tabaco, Albay. Claim for rent and damages to church and convent, amounting to ₱13,145.

We recommend payment of rent, ₱4,200; damages, ₱1,800; total, ₱6,000.

(Exhibits 129-131.)

No. 53. Lopez, Tayabas. Claim for rental and damages to convent, ₱3,264.94.

We recommend payment of rent, thirty-four months, at ₱60 per month, ₱2,040; damages, ₱300; total, ₱2,340.

(Exhibits 132-134.)

No. 54. Gubat, Sorsogon. Claim for rental and damages to church and convent, amounting to ₱3,750.

We recommend payment of rent, five months, at ₱100 per month, ₱500; damages, ₱900; total, ₱1,400.

(Exhibits 135-137.)

No. 55. Yriga, Ambos Camarines. Claim for rent and damages to convent, amounting to ₱4,255.

We recommend payment of rent, ₱2,500; damages, ₱150; total, ₱2,650.

(Exhibits 138-140.)

No. 56. Bula, Ambos Camarines. Claim ₱500 for the burning of certain missions.

We recommend that nothing be paid, the destruction being an incident of war.

(Exhibit 141.)

No. 57. Bulusan, Sorsogon. Claim ₱144,745 for the destruction by burning of the church, convent, and missions of the town and its suburbs.

We recommend that nothing be paid, the destruction being an incident of war.

(Exhibits 142-143.)

No. 58. Pilar, Sorsogon. Claim destruction of church and its effects, amounting to ₱34,000.

We recommend that nothing be paid, as the destruction was an incident of war.

(Exhibits 144-145.)

No. 59. Dolores, Tayabas. Claim damages to church and convent by fire, amounting to ₱12,470.

We recommend that nothing be paid, as the destruction was an incident of war.

(Exhibit 146.)

No. 60. Labo, Ambos Camarines. Claim damages to church, convent, and effects therein by fire, amounting to ₱53,974.25.

We recommend that nothing be paid, as the destruction was an incident of war.

(Exhibits 147-148.)

No. 61. Jovellar, Albay. Claim damages to church, convent, and effects therein by fire, amounting to ₱1,829.

We recommend that nothing be paid, as the destruction was an incident of war.

(Exhibit 149.)

No. 62. Manguirin, Ambos Camarines. Claim damages to church, convent, and effects therein to the value of ₱11,700.

We recommend that nothing be paid, as the destruction was an incident of war.

(Exhibit 150.)

No. 63. Alcala, Pangasinan. Claims rental for convent from November, 1899, to October, 1902, at ₱100 per month, ₱3,600.

We recommend payment of rental for seven months at ₱40 per month, ₱280. No damages.

(Exhibits 151-152.)

No. 64. Agullar, Pangasinan. Claims rental of and damages to convent amounting to ₱1,651.

We recommend payment of rental for twenty-one months at ₱50 per month, ₱1,050, and damages in the sum of ₱518; total, ₱1,568.

(Exhibits 153-154.)

No. 65. Salasa, Pangasinan. Claim for rental, church and convent, eighteen months at ₱100 per month, ₱1,800, and damages, ₱1,040.

We recommend payment of rental for eighteen months at ₱50 per month, ₱900, and damages in the sum of ₱250; total, ₱1,150.

(Exhibits 155-156.)

No. 66. Urdanata, Pangasinan. Claim is for rental of convent at ₱100 per month, twenty-seven months, ₱2,700, and for damages, ₱240; total, ₱2,940.

We recommend payment of rental for twenty-seven months at ₱70 per month, ₱1,890, and damages in the sum of ₱50; total, ₱1,940.

(Exhibits 157-158.)

No. 67. Santa Barbara, Pangasinan. Claim, rental for convent ₱2,000, twenty months at ₱100 per month, and damages ₱323.50; total, ₱2,323.50.

We recommend payment of rent twenty months at ₱50 per month, amounting to ₱1,000, and damages in the sum of ₱100; total, ₱1,100.

(Exhibits 159-160.)

No. 68. Calasia, Pangasinan. Claim rent of convent thirty-three months at ₱100 per month, ₱3,300, and damages to church and convent in the sum of ₱291; total, ₱3,591.

We recommend that the sum of ₱3,300 be paid, rental thirty-three months at ₱100 per month, and that no damages be considered; total, ₱3,300.

(Exhibits 161-162.)

No. 69. San Carlos, Pangasinan. Claim, rent of convent, twenty-seven months, at ₱100 per month, ₱2,700, and damages ₱2,290; total, ₱4,990.

We recommend that rent be paid for 28½ months at ₱70 per month, ₱1,995, and that ₱300 be paid for damages; total, ₱2,295.

(Exhibits 163-164.)

No. 70. Malasiqui, Pangasinan. Claim, rent of convent, ₱2,250, and damages in the sum of ₱276; total, ₱2,826.

We recommend that there be paid for rent of building the sum of ₱1,125 (22½ months at ₱50), and for damages the sum of ₱225; total, ₱1,350.

(Exhibits 165-166.)

No. 71. Bayambang, Pangasinan. Claim is for ₱5,700 rental for convent, and ₱1,141 for damages; total, ₱6,841.

We recommend the payment of ₱2,700 rental, forty-five months at ₱60 per month, and ₱300 for damages; total, ₱3,000.

(Exhibits 167-168.)

No. 72. Urbistondo, Pangasinan. Claim for rent of convent ₱150, and damages to same in the sum of ₱198; total, ₱348.

We recommend that rental be paid in the sum of ₱1,890 (twenty-seven damages; total, ₱185.

(Exhibits 169-170.)

No. 73. San Ysidro, Pangasinan. Claim is for rental in the sum of ₱559 for convent, and damages in the sum of ₱153; total, ₱712.

We recommend that rental be paid in the sum of ₱480, and that ₱20 be paid for damages; total, ₱500.

(Exhibits 171-172.)

No. 74. Sual, Pangasinan. Claim is for ₱1,440, rent of convent, and for ₱1,254 damages; total, ₱2,694.

We recommend that rental be paid for twenty-four months at ₱30 per month, amounting to ₱720, and that damages be not considered; total, ₱720.

(Exhibits 173-174.)

No. 75. Pozorrubio, Pangasinan. Claim is for rental of convent, ₱2,700, and damages in the sum of ₱101; total, ₱2,801.

We recommend that rental be paid in the sum of ₱1,890 (twenty-seven months at ₱70), and that there be paid for damages the sum of ₱40; total, ₱1,930.

(Exhibits 175-176.)

No. 76. Mangaterem, Pangasinan. Claim is for rent and damages to convent and boys' school in the sum of ₱4,223.

We recommend that rental be paid for twenty-four months at ₱70 per month, amounting to ₱1,680, and that for damages there be paid the sum of ₱220; total, ₱1,900.

(Exhibits 177-178.)

No. 77. Villasis, Pangasinan. The claim is for rental of and damages to the convent in the total sum of ₱2,045 (rental ₱930, and damages ₱1,115).

We recommend that rental be paid in the sum of ₱735, and that there be paid for damages the sum of ₱250; total, ₱985.

(Exhibits 179-180.)

No. 78. Santa Maria, Pangasinan. The claim is for rental of and damages to the convent in the sum of ₱960.

We recommend that rental be paid in the sum of ₱240 (twelve months at ₱20 per month), and that damages be not considered; total, ₱240.

(Exhibits 180-182.)

No. 79. Blumale, Pangasinan. The claim is for rental of and damages to the church and convent, amounting to ₱1,070.

We recommend that rent be paid for eight months at the rate of ₱20 per month, amounting to ₱160, and that damages be not considered; total, ₱160.

(Exhibits 183-184.)

No. 80. San Fabian, Pangasinan. The claim is for rental of and damages to convent and church, amounting to the sum of ₱7,142.75.

We recommend that rent be paid for thirty-seven months, at the rate of ₱55 per month, amounting to ₱2,035, and that there be paid for damages the sum of ₱250; total, ₱2,285.

(Exhibits 185-186.)

No. 81. Dagupan, Pangasinan. The claim is for rental of and damages to the convent in the sum of ₱11,481.48.

We recommend that rent be paid in the sum of ₱5,250 (forty-two months at ₱125 per month) and damages in the sum of ₱500; total, ₱5,750.

(Exhibits 187-188.)

No. 82. Santa Maria, Ilocos Sur. The claim is for ₱3,054 for rental of and damages to convent and church.

We recommend that rent be paid for twenty-nine months at ₱62 per month, amounting to ₱1,798, and that there be paid for damages the sum of ₱100; total, ₱1,898.

(Exhibits 189-190.)

No. 83. Candon, Ilocos Sur. The claim is for the sum of ₱2,800 for rental of and damages to the convent.

We recommend payment of rent for twenty-seven and one-half months, at ₱60, amounting to ₱1,650, and for damages the sum of ₱120; total, ₱1,770.

(Exhibits 191-192.)

No. 84. Narvacan, Ilocos Sur. Claim for rental of and damages to convent in the sum of ₱2,725.25.

We recommend payment of rent in the sum of ₱1,250 (twenty-five months at ₱50), and for damages the sum of ₱400; total, ₱1,650.

(Exhibits 193-194.)

No. 85. Magsingal, Ilocos Sur. The claim is for rental of and damages to convent in the sum of ₱2,184.

We recommend payment of rent in the sum of ₱840 (convent, thirteen months, at ₱55, and church, five months, at ₱25), and for damages the sum of ₱100; total, ₱940.

(Exhibits 195-196.)

No. 86. Lapo, Ilocos Sur. The claim is for rental of and damages to convent in the sum of ₱1,777.

We recommend that rent be paid in the sum of ₱765, seventeen months at ₱45, and damages to the sum of ₱125; total, ₱890.

(Exhibits 196-197.)

No. 87. Santo Domingo, Ilocos Sur. The claim is for rental of and damages to convent in the sum of ₱1,474.

We recommend payment of rental, sixteen months at ₱45 per month, amounting to ₱720, and that ₱80 be paid for damages; total, ₱800.

(Exhibits 196 and 198.)

No. 88. Tagudin, Ilocos Sur. Claim for rental and damages to convent amounting to ₱950.

We recommend payment of rent, eighteen months, at ₱32.50 per month, ₱585; damages, ₱15; total, ₱600.

(Exhibits 199-200.)

No. 89. Bantay, Ilocos Sur. Claim for rental and damages to convent amounting to ₱679.10.

We recommend payment of rent, eight and one-half months, at ₱40 per month, ₱340; damages, ₱150; total, ₱490.

(Exhibits 201-202.)

No. 90. Santa Cruz, Ilocos Sur. Claim for rental and damages to convent amounting to ₱2,086.

We recommend payment of rent, eleven months, at ₱60 per month, ₱660; damages, ₱140; total, ₱800.

(Exhibits 203-204.)

No. 91. San Vicente, Ilocos Sur. Claim for rental of convent, ₱135.

We recommend payment of rent amounting to ₱90; no damages; total, ₱90.

(Exhibits 205-206.)

No. 92. Santa Lucia, Ilocos Sur. Claim for rental and damages to convent warehouse and garden amounting to ₱1,428.10.

We recommend payment of rent, nine months, at ₱45 per month, ₱405; damages, ₱100; total, ₱505.

(Exhibits 207-208.)

No. 93. Santa, Ilocos Sur. Claim for rental and damages to convent amounting to ₱2,520.

We recommend payment of rent, twenty months, at ₱50 per month, ₱1,000; damages, ₱100; total, ₱1,100.

(Exhibits 209-210.)

No. 94. Cabugao, Ilocos Sur. Claim for rental and damages to convent amounting to ₱4,315.

We recommend payment of rent, eighteen months, at ₱50 per month, ₱900; damages, ₱1,000; total, ₱1,900.

(Exhibits 211-212.)

No. 95. Badoc, Ilocos Sur. Claim for rental and damages to convent amounting to ₱2,821.

We recommend payment of rent, twenty-seven months, at ₱30 per month, ₱810; damages, ₱200; total, ₱1,010.

(Exhibits 212-213.)

No. 96. Sinait, Ilocos Sur. Claim for rental and damages to convent amounting to ₱2,484.50.

We recommend payment of rental, eleven months, at ₱40 per month, ₱440; damages, ₱460; total, ₱900.

(Exhibits 212-214.)

No. 97. San Fernando, Union. Claim for rental and damages to church and convent amounting to ₱34,416.66.

We recommend payment of rent, forty-one months, at ₱120 per month, ₱4,920. We recommend that nothing be paid for damages, destruction, and incident of war; total, ₱4,920.

(Exhibits 215-218.)

No. 98. Santa Tomas, Union. Claim for rental and damages to church and convent amounting to ₱3,650.

We recommend payment of rent, twenty-six months, at ₱25 per month, ₱650; damages, ₱100; total, ₱750.

(Exhibits 217-218.)

No. 99. Balaon, Union. Claim for rental and damages to convent amounting to ₱2,548.32.

We recommend payment of rent, twenty-five and one-half months, at ₱60 per month, ₱1,530; damages, ₱45; total, ₱1,575.

(Exhibits 219-220.)

- No. 100. Bacnotan, Union. Claim for rental and damages to convent and church amounting to ₱695.
We recommend payment of rent, eleven months at ₱30 per month, ₱330; no damages: total, ₱330.
(Exhibits 221-222.)
- No. 101. Namacpacan, Union. Claim for rental and damages to convent amounting to ₱3,141.60.
We recommend payment of rent, ₱1,313; damages, ₱87; total, ₱1,400.
(Exhibits 223-224.)
- No. 102. Naguillan, Union. Claim for rental and damages to church and convent amounting to ₱2,355.
We recommend payment of rent, twenty-five and one-half months at ₱45 per month, ₱1,147.50; damages, ₱100; total, ₱1,247.50.
(Exhibits 225-226.)
- No. 103. Bangar, Union. Claim for rental and damages to convent amounting to ₱2,228.
We recommend payment of rent, twenty-seven months at ₱40 per month, ₱1,080; damages, ₱150; total, ₱1,230.
(Exhibits 227-228.)
- No. 104. Aringay, Union. Claim for rental and damages to convent amounting to ₱6,000.
We recommend payment of rent, twenty-six months at ₱80 per month, ₱2,080; damages, ₱200; total, ₱2,280.
(Exhibits 229-230.)
- No. 105. Bangued, Abra. Claim for rental and damages to church and convent amounting to ₱4,930.68.
We recommend payment of rent, twenty-seven and two-thirds months, at ₱65 per month, ₱1,800; church, ₱80; damages, ₱500; total, ₱2,380.
(Exhibits 321-232.)
- No. 106. Bucay, Abra. Claim for rental and damages to convent, amounting to ₱730.
We recommend payment of rent, eleven and one-half months, at ₱30 per month, ₱345; damages, ₱125; total, ₱470.
(Exhibits 233-234.)
- No. 107. Tayum, Abra. Claim for rental and damages to convent amounting to ₱1,096.50.
We recommend payment of rent, six months, at ₱30 per month, ₱180; damages, ₱200; total, ₱380.
(Exhibits 234-235.)
- No. 108. San Juan, Abra. Claim for rental and damages to church and convent amounting to ₱1,752.
We recommend payment of rent, church, eighteen months, at ₱12½ per month, ₱225. Convent, eighteen months, at ₱25 per month, ₱450; damages, ₱50; total, ₱725.
(Exhibits 236-234.)
- No. 109. San Gregorio, Abra. Claims rental and damages, church and convent, amounting to ₱2,244.
We recommend payment of rent, seventeen months at ₱30, ₱510; damages, ₱60; total, ₱570.
(Exhibits 237-238.)
- No. 110. Dolores, Abra. Claims rental and damages, convent, amounting to ₱4,620.
We recommend payment of rent, seventeen months at ₱25, ₱425. No damages.
(Exhibits 238-239.)
- No. 111. La Paz, Abra. Claims rental and damages, convent, amounting to ₱2,586.
We recommend payment of rent, seven months at ₱35, ₱245; damages, ₱200; total, ₱445.
(Exhibits 238 and 240.)
- No. 112. Pidligan, Abra. Claim rental and damages, convent, amounting to ₱1,875.90.
We recommend payment of rent, fourteen months at ₱30, ₱420; damages, ₱200; total, ₱620.
(Exhibits 241-242.)

- No. 113. Carig, Isabela. Claim rental and damages, church and convent, amounting to ₱1,400.
We recommend payment of rent, twenty-five months at ₱30, ₱750; damages, ₱100; total, ₱850.
(Exhibits 243-244.)
- No. 114. Reina Mercedes, Isabela. Claim rental and damages, convent, amounting to ₱850.
We recommend payment of rent, twenty-two and one-half months at ₱20 per month, ₱450; damages, ₱150; total, ₱600.
(Exhibits 245-246.)
- No. 115. Exchague, Isabela. Claim rental and damages, convent, amounting to ₱5,088.
We recommend payment of rent, thirty-two months at ₱60 per month, ₱1,920; damages, ₱200; total, ₱2,120.
(Exhibits 247-248.)
- No. 116. Cordon, Isabela. Claim rental and damages, convent, amounting to ₱1,106.
We recommend payment of rent, twenty-eight months at ₱10 per month, ₱280, and no damages.
(Exhibits 249-250.)
- No. 117. Tumanini, Isabela. Claim rental and damages, convent, amounting to ₱4,100.
We recommend payment of rent, ₱2,500; damages, ₱175; total, ₱2,675.
(Exhibits 251-252.)
- No. 118. Ilagan, Isabela. Claim rental and damages, convent, amounting to ₱3,741.12.
We recommend payment of rent, thirty-seven months at ₱60 per month, ₱2,220; damages, ₱300; total, ₱2,520.
(Exhibits 253-254.)
- No. 119. Cauayan, Isabela. Claim rental and damages, convent, amounting to ₱2,723.
We recommend payment of rent, twenty-one months, at ₱40 per month, ₱840. No damages.
(Exhibits 255-256.)
- No. 120. Moncada, Tarlac. Claim rental and damages, convent, amounting to ₱3,820.91.
We recommend payment of rent, twenty-seven months, at ₱65 per month, ₱1,755; damages, ₱320; total, ₱2,075.
(Exhibits 257-258.)
- No. 121. Camiling, Tarlac. Claim rental and damages, convent, amounting to ₱2,169.
We recommend payment of rent, twenty-eight months, at ₱60 per month, ₱1,680; damages, ₱225; total, ₱1,905.
(Exhibits 259-260.)
- No. 122. Gerona, Tarlac. Claim rental and damages, church and convent, amounting to ₱3,951.
We recommend payment of rent, twenty-six months, at ₱70 per month, ₱1,820; damages, ₱200; total, ₱2,020.
(Exhibits 261-263.)
- No. 123. Panigul, Tarlac. Claim rental and damages, church and convent, amounting to ₱4,130.
We recommend payment of rent, ₱2,520; damages, ₱250; total, ₱2,770.
(Exhibits 264-266.)
- No. 124. Pura, Tarlac. Claim rental and damages, church and convent, amounting to ₱1,963.
We recommend payment of rent, ₱650; damages, ₱150; total, ₱800.
(Exhibits 267-268.)
- No. 125. Alcala, Cagayan. Claim rental and damages, convent, amounting to ₱1,569.
We recommend payment of rent, twenty-six months, at ₱80 per month, ₱2,080; damages, ₱400; total, ₱2,480.
(Exhibits 269-270.)
- No. 126. Pamplona, Cagayan. Claim rental and damages, convent, amounting to ₱1,443.
We recommend payment of rent, twelve months, at ₱40 per month, ₱480; damages, ₱150; total, ₱630.
(Exhibits 271-272.)

- No. 127. Buguey, Cagayan. Claim rental convent, amounting to ₱2,100.

We recommend payment of rent in the sum of ₱350. No damages.
(Exhibits 273-274.)

- No. 128. Camalanlupan, Cagayan. Claim rental and damages to convent, amounting to ₱1,231.

We recommend payment of rent, twenty-two months, at ₱25 per month, ₱550; damages, ₱75; total, ₱625.
(Exhibits 275-276.)

- No. 129. Iguig, Cagayan. Claim rental for convent, amounting to ₱150.

We recommend that this sum be paid, the records at these headquarters showing that the town was occupied as claimed by church.

- No. 130. Gataran, Cagayan. Claim rental and damages convent, amounting to ₱1,708.50.

We recommend payment of rent, twenty-eight months, at ₱40 per month, ₱1,120. No damages.
(Exhibits 278-279.)

- No. 131. Amulung, Cagayan. Claim rental and damages convent amounting to ₱630.

We recommend payment of rent, ₱300; and damages, ₱250; total, ₱550.
(Exhibits 280-281.)

- No. 132. Aparri, Cagayan. Claim rent and damages church and convent amounting to ₱20,350.

We recommend payment of rent, fifty-five months at ₱150 per month, ₱8,250, in full for all rent and damages; total, ₱8,250.
(Exhibits 282-284.)

- No. 133. Lallo, Cagayan. Claim rental and damages to convent amounting to ₱3,211.

We recommend payment of rent, twenty-four months at ₱60 per month, ₱1,440; also eighteen months at ₱20 per month, ₱360; and damages, ₱100; total, ₱1,900.
(Exhibits 285-286.)

- No. 134. Claneria, Cagayan. Claim rental and damages convent, amounting to ₱1,303.

We recommend payment of rent, twenty-two months at ₱50 per month, ₱1,100; damages, ₱150; total, ₱1,250.
(Exhibits 287-288.)

- No. 135. Cervantes, Lepanto-Bantoc. Claim rental and damages to convent amounting to ₱970.

We recommend payment of rent, ₱400. No damages.
(Exhibits 289-290.)

- No. 136. Angaqui, Lepanto-Bantoc. Claim rental convent amounting to ₱240.

We recommend payment of rent, ₱240. No damages.
(Exhibits 291-292.)

- No. 137. Pasiquin, Ilocos Norte. Claim rental convent amounting to ₱1,600.

We recommend payment of rent, eighteen months, at ₱10 per month, ₱180. No damages.
(Exhibits 293-295.)

- No. 138. San Nicholas, Ilocos Norte. Claim rental and damages to convent amounting to ₱3,439.

We recommend payment of rent, eighteen months, at ₱35 per month, ₱630; damages, ₱125; total, ₱755.
(Exhibits 296-297.)

- No. 139. Batac, Ilocos Norte. Claim rental and damages to convent amounting to ₱5,570.

We recommend payment of rent, nineteen months, at ₱25 per month, ₱475; damages, ₱170; total, ₱645.
(Exhibits 297-298.)

- No. 140. Paoyay, Ilocos Norte. Claim rental and damages to convent amounting to ₱5,167.

We recommend payment of rent, twenty-one months, at ₱25 per month, ₱525; damages, ₱170; total, ₱695.
(Exhibits 299-300-297.)

- No. 141. San Miguel, Ilocos Norte. Claim rental and damages to convent amounting to ₱3,988.50.

We recommend payment of rent, twenty-six months, at ₱50 per month, ₱1,300; damages, ₱110; total, ₱1,410.
(Exhibits 301-302.)

No. 142. Bangui, Ilocos Norte. Claim rental convent amounting to ₱1,350.

We recommend payment of rent, twenty-seven months, at ₱15 per month, ₱405. No damages.

(Exhibits 302-303.)

No. 143. Vintar, Ilocos Norte. Claim rental and damages to convent amounting to ₱4,245.

We recommend payment of rent, thirteen months, at ₱30 per month, ₱390; damages, ₱45; total, ₱435.

(Exhibits 302-304.)

No. 144. Piddig, Ilocos Norte. Claim rental and damages to convent amounting to ₱4,405.

We recommend payment of rent, fourteen months, at ₱30 per month, ₱420; damages, ₱205; total, ₱625.

(Exhibits 305-306.)

No. 144. Piddig, Ilocos Norte. Claim and rental damages to convent amounting to ₱4,393.

We recommend payment of rent, twenty-seven months, at ₱35 per month, ₱945; damages, ₱340; total, ₱1,285.

(Exhibits 306-307.)

No. 146. Bana, Ilocos Norte. Claim rental convent amounting to ₱50.

We recommend payment of rent for one month, ₱5. No damages.

(Exhibits 308-306.)

No. 147. Bacarra, Ilocos Norte. Claim rent and damages to convent amounting to ₱1,385.

We recommend payment of rent, seven months, at ₱20 per month, ₱140; damages, ₱185; total, ₱325.

(Exhibit 309.)

The board thereupon adjourned to meet from day to day at 9 o'clock a. m.

W. W. GIBSON,
Major, General Staff.

HEADQUARTERS PHILIPPINES DIVISION,
Manila, P. I., September 7, 1905.

The board met pursuant to adjournment.

Present: All the members.

The following order was then read:

HEADQUARTERS PHILIPPINES DIVISION,
Manila, P. I., August 30, 1905.

SPECIAL ORDERS, }
No. 198. }

[Extract.]

* * * * *

9. First Lieut. John W. Moore, Second Cavalry, is detailed as a member of the board of officers appointed by paragraph 3, Special Orders, No. 175, current series, these headquarters, known as the "Board on church claims," vice Maj. William W. Gibson, General Staff, hereby relieved.

While on this duty Lieutenant Moore's station will be Manila. The travel enjoined is necessary for the public service.

* * * * *

By command of Major-General Corbin:

JOHN D. KNIGHT,
Lieutenant-Colonel, General Staff,
Chief of Staff.

Official:

W. A. SIMPSON,
Military Secretary.

Major Gibson then withdrew and First Lieut. John W. Moore took his place as a member of the board.

The following cases were then considered and passed:

- No. 148. Angat, Bulacan. Claim damages to church and convent by fire amounting to ₱72,100.

We recommend that nothing be paid, as the destruction was an incident of war.

(Exhibits 310-311.)

- No. 149. Bigaa, Bulacan. Claim damages to church and convent by fire amounting to ₱81,800.

We recommend that nothing be paid, as the destruction was an incident of war.

(Exhibits 312-313.)

- No. 150. Bocaue, Bulacan. Claim damages to church and convent by fire, amounting to ₱121,996.

We recommend that nothing be paid, as the destruction was an incident of war.

(Exhibits 314-315.)

- No. 151. Calumpit, Bulacan. Claim damages to church and convent by fire, amounting to ₱56,000.

We recommend that nothing be paid, as the destruction was an incident of war.

(Exhibits 316-317.)

- No. 152. Marilao, Bulacan. Claim damages to church and convent by fire, amounting to ₱123,296.

We recommend that nothing be paid, as the destruction was an incident of war.

(Exhibits 318-319.)

- No. 153. Norzagaray, Bulacan. Claim rent and damages to church, amounting to ₱2,000.

We recommend payment of rent ₱300. No damages.

(Exhibits 320-321.)

- No. 154. Obando, Bulacan. Claim rental and damages church and convent, amounting to ₱2,677.

We recommend payment of rent, eight months, at ₱50 per month, ₱400. No damages.

(Exhibits 322-323.)

- No. 155. Paombong, Bulacan. Claim rental and damages to convent amounting to ₱1,174.

We recommend payment of rent, twelve months, at ₱75 per month, ₱900; damages, ₱50; total, ₱950.

(Exhibits 324-325.)

- No. 156. Polo, Bulacan. Claim rental and damages to church and convent amounting to ₱19,995.

We recommend payment of rent, thirty months, at ₱60 per month, ₱1,800; damages, ₱350; total, ₱2,150.

(Exhibits 326-327.)

- No. 157. Pulilan, Bulacan. Claim rental and damages, convent, amounting to ₱1,120.

We recommend payment of rent, eighteen months, at ₱40 per month, ₱720; damages, ₱400; total, ₱1,120.

(Exhibits 328-329.)

- No. 158. Santa Isabel, Bulacan. Claim damages to church property amounting to ₱1,017.50. (Duplicate and revoked, see case No. 25.)

We recommend that nothing be paid on this claim. Even if done by American soldiers the damage was purely wanton.

(Exhibit 330.)

- No. 159. San Rafael, Bulacan. Claim rental and damages, convent, amounting to ₱3,216.66.

We recommend that nothing be paid on this claim. Even if done by ₱980, and damages, ₱1,300; total, ₱2,280.

(Exhibits 331-333.)

- No. 160. Balayan, Batangas. Claim rental and damages, convent, amounting to ₱5,169.25.

We recommend payment of rent, forty-one months, at ₱85 per month, ₱3,485, and damages, ₱350; total, ₱3,835.

(Exhibits 334, 335.)

- No. 161. Lemery, Batangas. Claim rental and damages, convent, amounting to ₱7,218.
We recommend payment of rent, forty-two months, at ₱65 per month, ₱2,730; damages, ₱325; total, ₱3,055.
(Exhibits 335, 337.)
- No. 162. Lipa, Batangas. Claim rental and damages, church and convent, amounting to ₱11,092.75.
We recommend payment of rent, forty-four months, at ₱20 per month, ₱880, only.
(Exhibits 338, 339.)
- No. 163. Tarlac, Tarlac. Claim rental and damages, church and convent, amounting to ₱8,133.
We recommend payment of rent, thirty-eight months, at ₱50 per month, ₱1,900; damages, ₱500; total, ₱2,400.
(Exhibits 340, 341.)
- No. 164. San Jose, Batangas. Claim rental and damages, convent, amounting to ₱3,905.
We recommend payment of rent, thirty-seven months, at ₱80 per month, ₱2,960; damages, ₱170; total, ₱3,130.
(Exhibits 342, 344.)
- No. 165. Santo Tomas, Batangas. Claim rental and damages to church and convent, amounting to ₱19,304.
We recommend payment of rent, eight months, at ₱100 per month, for church, ₱800; forty-four months, at ₱90 per month, for convent, ₱3,960; damages, ₱1,000; total, ₱5,760.
(Exhibits 345-347.)
- No. 166. Lobo, Batangas. Claim rental and damages to church and convent, amounting to ₱1,887.85.
We recommend payment of rent, twenty-one months, at ₱40 per month, ₱840; damages, ₱100; total, ₱940.
(Exhibit 348-355.)
- No. 167. Santa Cruz, Marinduque. Claim rental and damages to church and convent, amounting to ₱5,065.
We recommend payment of rent, church, eight months, at ₱70 per month, ₱560; convent, twenty-one months, at ₱70 per month, ₱1,470; damages, ₱274; total, ₱2,304.
(Exhibits 356-358.)
- No. 168. Calapan, Mindoro. Claim rental and damages, church and convent, amounting to ₱2,298.
We recommend payment of rent, fifteen months, at ₱40 per month, ₱600; damages, ₱700; total, ₱1,300.
(Exhibits 359, 360.)
- No. 169. Pola, Mindoro. Claim rental and damages to convent amounting to ₱4,810.
We recommend payment of rent, twenty-seven months, at ₱30 per month, ₱810; damages, ₱800; total, ₱1,610.
(Exhibits 361, 362.)
- No. 170. Anda, Zambales. Claim rental and damages to convent amounting to ₱265.
We recommend payment of rent, four and one-half months, at ₱30 per month, ₱135; damages, ₱40; total, ₱175.
(Exhibits 363, 364.)
- No. 171. Alaminos, Zambales. Claim rental and damages to convent, amounting to ₱1,900.
We recommend payment of rent, twenty-eight months, at ₱50 per month, ₱1,400; damages, ₱50; total, ₱1,450.
(Exhibits 365, 366.)
- No. 172. San Isidro, Zambales. Claim rental and damages to convent, amounting to ₱840.
We recommend payment of rent, twenty-three months, at ₱30 per month, ₱690; damages, ₱150; total, ₱840.
(Exhibits 367, 368.)
- No. 173. Santa Cruz, Zambales. Claim rental and damages, convent, amounting to ₱8,276.50.
We recommend payment of rent, thirty months, at ₱40 per month, ₱1,200; damages, ₱1,165; total, ₱2,365.
(Exhibits 369, 370.)

- No. 174. Masinloc, Zambales. Claim rental and damages, church and convent, amounting to ₱2,251.
We recommend payment of rent, thirty months, at ₱35 per month, ₱1,050; damages, ₱200; total, ₱1,250.
(Exhibits 371, 372.)
- No. 175. Infanta, Zambales. Claim damages to convent in the sum of ₱420.
We recommend payment of ₱300 as damages.
(Exhibits 373, 374.)
- No. 176. Boac, Zambales. Claim rental and damages, church and convent, amounting to ₱8,909.75.
We recommend payment of rent, church, twenty-two months, at ₱80 per month, ₱1,660; convent, twenty-six months, at ₱70 per month, ₱1,820; damages, ₱628; total, ₱4,108.
- No. 177. Malitbog, Leyte. Claim damages to church and convent by loot and fire amounting to ₱2,809.
We recommend that nothing be paid, as the damage inflicted was either an incident of war or wanton damages.
(Exhibits 379, 380 and B.)
- No. 178. San Sabastian, Samar. Claim damages to church and convent by fire, amounting to ₱12,300.20.
We recommend that nothing be paid, as the destruction was an incident of war.
(Exhibit 381.)
- No. 179. Paranas, Samar. Claim damages to church, convent, and mission, by fire, amounting to ₱96,123.
We recommend that nothing be paid, as the destruction was an incident of war.
(Exhibits 382, 383.)
- No. 180. Wright, Samar. Claim damages to church, convent, and effects, by fire, amounting to ₱108,000.
We recommend that nothing be paid, as the destruction was an incident of war.
(Exhibit 384.)
- No. 181. Inabanga (Loay), Bohol. Claim damages to church, convent, and effects, by fire, amounting to ₱22,877.
We recommend that nothing be paid, as the destruction was an incident of war.
(Exhibit 385.)
- No. 182. Antequera, Bohol. Claim rental of convent, amounting to ₱60; no damages.
We recommend that this amount be paid.
(Exhibit 386.)
- No. 183. Lila, Bohol. Claim damages to church, convent, and effects, by fire, amounting to ₱20,479.75.
We recommend that nothing be paid, as the destruction was an incident of war.
(Exhibit 387.)
- No. 184. Sevilla (Loay), Bohol. Claim damages to church, convent, and effects, by fire, amounting to ₱14,052.
We recommend that nothing be paid, as the destruction was an incident of war.
(Exhibit 388.)
- No. 185. Bogo, Cebu. Claim rental, church and convent, amounting to ₱160; no damages.
We recommend that this amount be paid.
(Exhibits 389, 390.)
- No. 186. Calbayog, Samar. Claim rental and damages to church and convent, amounting to ₱8,079.17.
We recommend payment of rent, old convent, thirty-two months, at ₱50, ₱1,600; new convent, thirty-two months, at ₱50, ₱1,600; church, five months, at ₱60, ₱300; damages, ₱300; total, ₱3,800.
(Exhibits 391-395.)
- No. 187. Balamban, Cebu. Claim rent for convent, amounting to ₱400. No damages.
We recommend payment of rent, seven months, at ₱30 per month, ₱210.
(Exhibits 396, 397.)

No. 188. Misamis, Mindanao. Claim rental and damages, convent, amounting to ₱2,900.

We recommend payment of rent, twenty-seven months, at ₱30 per month, ₱2,160. No damages.

(Exhibits 398, 400.)

No. 189. Ballinasay (Misamis), Mindanao. Claim rental, convent, amounting to ₱220. (Five and one-half months, at ₱40 per month.) No damages.

We recommend that this amount be paid.

(Exhibits 401, 402.)

No. 190. Carigara, Leyte. Claim rental and damages, convent, amounting to ₱1,718.

We recommend payment of rent, ₱1,400; damages, ₱25; total, ₱1,425.

(Exhibits 403-408.)

No. 191. Laoang, Samar. Claim rental and damages, church, convent, and effects, amounting to ₱15,325.

We recommend payment of rent, forty-two months, at ₱50 per month, ₱2,100; damages, ₱1,090; total, ₱3,190.

Damages to personal effects not considered, as, even if evidence could be produced to substantiate claim, it would be for wanton damages. (See Exhibit B.)

(Exhibits 409-413.)

No. 192. Catubig, Samar. Claim damages to church and effects, by burning, amounting to ₱560.

We recommend that nothing be paid, the destruction being an incident of war.

(Exhibits 413-414.)

The board adjourned to meet from day to day at 9 o'clock a. m.

J. W. MOORE,

First Lieutenant, Second Cavalry.

HEADQUARTERS PHILIPPINE DIVISION,
Manila, P. I., September 30, 1905.

The board met pursuant to adjournment.

Present: All the members.

The board then proceeded to consider and pass upon the following cases:

No. 193. Cabuyao, Laguna. Claim for rental and damages to convent, amounting to ₱8,520.

We recommend payment of rent, forty months, at ₱90 per month, ₱3,600; damages, ₱400; total, ₱4,000.

(Exhibits 415, 416.)

No. 194. Bay, Laguna. Claim for rental and damages to church and convent, amounting to ₱12,666.

We recommend payment of rent—church, ₱150; convent, 25 months, at ₱60 per month, ₱1,500; damages, ₱400; total, ₱2,050.

(Exhibits 417, 418.)

No. 195. Binan, Laguna. Claim for rental and damages, amounting to ₱8,425.

We recommend payment of rent, 44 months, at ₱120 per month, ₱5,280; damages, ₱87.50; total, ₱5,367.50.

(Exhibits 419, 420.)

No. 196. Paete, Laguna. Claim for rental and damages, amounting to ₱16,091.16.

We recommend payment of rent, twenty-seven months, at ₱125 per month, ₱3,375. No damages.

(Exhibits 421, 422.)

No. 197. Pakil, Laguna. Claim for rental and damages, amounting to ₱2,888.25.

We recommend payment of rent, twenty months, at ₱60 per month, ₱1,200; damages, ₱200; total, ₱1,400.

(Exhibits 423, 424.)

No. 198. Los Banos, Laguna. Claim for rental and damages to church and convent, amounting to ₱4,662.20.

We recommend payment of rent—convent, forty-six months, at ₱40 per month, ₱1,840; church, forty-two months, at ₱6 per month, ₱252; damages, ₱450; total, ₱2,542.

(Exhibits 425, 426.)

No. 199. Magdalena, Laguna. Claim for rental and damages, amounting to ₱5,830.62.

We recommend payment of rent, twenty-nine months, at ₱60 per month, ₱1,740; damages, ₱200; total, ₱1,940.

(Exhibits 427, 428.)

No. 200. Bauan, Batangas. Claim for rental and damages to church and convent, amounting to ₱8,700.

We recommend payment of rent, forty-one months, at ₱150 per month, ₱6,150; no damages; total, ₱6,150.

(Exhibits 429-430.)

No. 201. Morong, Rizal. Claim for rental and damages, amounting to ₱6,100.50.

We recommend payment of rent, ₱1,925; damages, ₱200; total, ₱2,125.

(Exhibits 431-432.)

No. 202. Las Pinas, Rizal. Claim for rental and damages, amounting to ₱1,850.

We recommend payment of rent, five months, at ₱30 per month, ₱150; no damages;^a total, ₱150.

(Exhibits 433-434.)

No. 203. Navotas, Rizal. Claim damages amounting to ₱3,248.35.

We recommend payment of no damages. The church not occupied, and damages purely wanton, if occurred as stated. (See Exhibits B and C and 435.)

No. 204. Tagulig, Rizal. Claim for rental and damages, amounting to ₱20,920.

We recommend payment of rent, thirty-three months, at ₱90 per month, ₱2,970; damages, ₱500; total, ₱3,470.

(Exhibits 436-437.)

No. 205. Caloocan, Rizal. Claim for rental and damages to church and convent, amounting to ₱102,120.

We recommend payment of rent, church, thirty months, at ₱40 per month, ₱1,200; convent, fifteen months, at ₱60 per month, ₱900; damages, ₱200; total, ₱2,300.

(Exhibits 438-439.)

No. 206. San Pablo, Laguna. Claim for rental and damages to church and convent, amounting to ₱44,389.90.

We recommend payment of rent for church and convent, ₱2,500; damages, ₱600; total, ₱3,100.

(Exhibits 440-442.)

No. 207. San Antonio, Laguna. Claim for damages to church and convent, amounting to ₱70,000.

We recommend that nothing be paid, as this was an incident of war.

(Exhibit 443.)

No. 208. Meycauayan, Bulacan. Claim for rental and damages to church and convent, amounting to ₱5,565.

We recommend payment of rent, thirty months, at ₱60 per month, ₱1,800; no damages; total, ₱1,800.

(Exhibits 444, 445.)

No. 209. San Isidro, Nueva Ecija. Claim for rental and damages to church and convent, amounting to ₱7,543.50.

We recommend payment of rent, forty-four months, at ₱75 per month, ₱3,300; damages, ₱250; total, ₱3,550.

(Exhibits 446-448.)

No. 210. Cabanatuan, Nueva Ecija. Claim for rental and damages to church and convent, amounting to ₱6,672.

We recommend payment of rent, convent, forty-four months, at ₱65 per month, ₱2,860; church, fourteen months, at ₱45 per month, ₱630; damages, ₱500; total, ₱3,990.

(Exhibits 449, 450.)

^a Damages either an incident of war or claim against insular government.

- No. 211. Cabiao, Nueva Ecija. Claim for rental and damages to church and convent amounting to ₱3,420.87.
We recommend payment of rent, twenty-four months, at ₱50 per month, ₱1,200; damages, ₱500; total, ₱1,700.
(Exhibits 451, 452.)
- No. 212. Batang, Batangas. Claim for damages by loot and fire to buildings and effects, amounting to ₱7,500.
We recommend that nothing be paid.
(Exhibits B, C, and 453.)
- No. 213. Alaminos, Laguna. Claim for rental and damages to church and convent, amounting to ₱4,020.
We recommend payment of rent, convent, twenty-three months, at ₱40 per month, ₱920; church, four months, at ₱25 per month, ₱100; damages, ₱200; total, ₱1,220.
(Exhibits 454, 455.)
- No. 214. Tambobong, Rizal. Claim for rental and damages to convent, amounting to ₱380.
We recommend payment of rent, ₱180, and damages, ₱100; total, ₱280.
(Exhibit 456.)
- No. 215. Pangil, Laguna. Claim for rental and damages to church and convent, amounting to ₱3,475.50.
We recommend payment of rent, twenty-three months, at ₱75 per month, ₱1,725; damages, ₱250; total, ₱1,975.
(Exhibits 457, 458.)
- No. 216. Samal, Bataan. Claim for rental and damages to convent, amounting to ₱1,485.
We recommend that this amount be paid as rent; no damages: total, ₱1,485.
(Exhibits 459, 460.)
- No. 217. Abucay, Bataan. Claim for rental and damages to convent, amounting to ₱2,874.
We recommend payment of rent, ₱1,170; damages, ₱200; total, ₱1,370.
(Exhibits 461, 462.)
- No. 218. Pilar, Bataan. Claim for damages, amounting to ₱154.
We recommend that nothing be paid, as the church buildings were not occupied by American troops.
(Exhibits 463, 464.)
- No. 219. Barasoain, Bulacan. Claim for rental and damages to church and convent, amounting to ₱10,800.
We recommend payment of rent, thirty-five months, at ₱150 per month, ₱5,250; damages, ₱400; total, ₱5,650.
(Exhibits 465-468.)
- No. 220. Balanga, Bataan. Claim, rental and damages to church and convent, amounting to ₱3,083.
We recommend payment of rent, eighteen months, at ₱100 per month, ₱1,800; damages, ₱300; total, ₱2,100.
(Exhibits 469, 470.)
- No. 221. Dinalupijan, Bataan. Claim for rental and damages to convent, amounting to ₱3,163.
We recommend payment of rent, seventeen months, at ₱45 per month, ₱765; damages, ₱500; total, ₱1,065.
(Exhibits 471, 472.)
- No. 222. Orane, Bataan. Claim for rental and damages to church and convent, amounting to ₱3,944.
We recommend payment of rent, twenty-two months, at ₱75 per month, ₱1,650; no damages; total, ₱1,650.
(Exhibits 473, 474.)
- No. 223. San Juan de Guinba, Nueva Ecija. Claim for rental and damages to church and convent, amounting to ₱3,350.
We recommend payment of rent, twenty-five months, at ₱35 per month, ₱875; damages, ₱140; total, ₱1,015.
(Exhibits 475, 476.)
- No. 224. Gapan, Nueva Ecija. Claim for rental and damages to church and convent, amounting to ₱5,065.
We recommend payment of rent, sixteen months, at ₱70 per month, ₱1,120; damages, ₱200; total, ₱1,320.
(Exhibits 477, 478.)

No. 225. San Antonio, Nueva Ecija. Claim for rental and damages to church and convent, amounting to ₱1,800.

We recommend payment of rent, twelve months, at ₱50 per month, ₱600; damages, ₱400; total, ₱1,000.

(Exhibits 479, 480.)

No. 226. Guagua, Pampanga. Claim for rental and damages to church and convent, amounting to ₱48,400.

We recommend payment of rent, convent, twenty-seven months, at ₱100 per month, ₱2,700; church, ten months, at ₱150 per month, ₱1,500; damages, ₱850; total, ₱5,050.

(Exhibits 481-483.)

No. 227. Mabalacat, Pampanga. Claim for damages to church, ₱3,365.

We recommend payment of damages, ₱529.

(Exhibits 483, 484.)

No. 228. Angeles, Pampanga. Claim for rental and damages to church, convent, chapel, and grounds, ₱24,568.35.

We recommend payment of rent as follows: Church, sixteen months, at ₱150 per month, ₱2,400; convent, thirty-seven and one-half months, at ₱50 per month, ₱1,875; damages, ₱1,450; total, ₱5,725.

(Exhibits 485, 486.)

No. 229. Floridablanca, Pampanga. Claim for rental and damages to convent, amounting to ₱4,916.

We recommend payment of rent, nineteen months, at ₱40 per month, ₱760; damages, ₱300; total, ₱1,060.

(Exhibits 487, 488.)

No. 230. Macabebe, Pampanga. Claim for damages to church and convent destroyed by fire, ₱100,000.

We recommend that nothing be paid, as the destruction was an incident of war.

(Exhibits 489, 490.)

No. 231. San Fernando, Pampanga. Claim for damages to church and convent by fire, ₱68,352.

We recommend that nothing be paid, as the destruction was an incident of war.

(Exhibits 491-494.)

No. 232. Santa Ana, Pampanga. Claim for rental and damages to convent, amounting to ₱375.

We recommend payment of rent, fourteen months, at ₱15 per month, ₱210; damages, ₱15; total, ₱225.

(Exhibits 493, 494.)

No. 233. Arayat, Pampanga. Claim for rental and damages to church and convent, amounting to ₱22,408.67.

We recommend payment of rent as follows: Convent, forty-seven months, at ₱60 per month, ₱2,860; church, eight months, at ₱10 per month, ₱80; damages, ₱650; total, ₱3,550.

(Exhibits 495, 496.)

No. 234. Porac, Pampanga. Claim for rental and damages to church and convent, amounting to ₱7,744.

We recommend payment of rent, twenty-one months, at ₱40 per month, ₱840; damages, ₱550; total, ₱1,390.

(Exhibits 497, 498.)

No. 235. Santo Tomas, Pampanga. Claim for damages to church and convent, destroyed by fire, ₱44,278.

We recommend that nothing be paid, as the destruction was an incident of war.

(Exhibits 499, 500.)

No. 236. Santa Rita, Pampanga. Claim for rental and damages to convent, amounting to ₱10,600.

We recommend payment of rent, eighteen months, at ₱70 per month, ₱1,260; damages, ₱442; total, ₱1,702.

(Exhibits 501, 502.)

No. 237. Candaba, Pampanga. Claim for rental and damages to church and convent, amounting to ₱2,840.

We recommend payment of rent as follows: Convent, twenty-eight months, at ₱60 per month, ₱1,680; church, nine months, at ₱60 per month, ₱540; damages, ₱200; total, ₱2,420.

(Exhibits 503, 504.)

No. 238. Magalang, Pampanga. Claim for rental and damages to church and convent, amounting to ₱2,460.

We recommend payment of rent as follows: Convent, twenty months, at ₱40 per month, ₱800; church, four months, at ₱50 per month, ₱200; damages, ₱224; total, ₱1,224.

(Exhibits 505, 506.)

No. 239. San Simon, Pampanga. Claim for damages to church and convent, by fire amounting to ₱150,300.

We recommend that nothing be paid, as the destruction was an incident of war.

(Exhibit 507.)

No. 240. San Luis, Pampanga. Claim for rental and damages to convent, amounting to ₱13,800.

We recommend payment of rent, twenty-six months, at ₱100 per month, ₱2,600; damages, ₱300; total, ₱2,900.

(Exhibits 508, 509.)

No. 241. Bacolor, Pampanga. Claim for rental and damages to church and convent, amounting to ₱12,200.

We recommend payment of rent as follows: Convent, twenty months, at ₱65 per month, ₱1,320; church, three months, at ₱20 per month, ₱60; damages, ₱450; total, ₱2,330.

(Exhibits 510, 511.)

No. 242. Mexico, Pampanga. Claim for rental and damages to church and convent, amounting to ₱124,700.24.

We recommend payment of rent as follows: Convent, twenty-one and one-half months, at ₱80 per month, ₱1,720; church, three and one-half months, at ₱10 per month, ₱35; damages, ₱500; total, ₱2,255.

(Exhibits 512, 513.)

No. 243. Sexmoan, Pampanga. Claim for damages to convent by fire, ₱5,452.

We recommend that nothing be paid, as the destruction was an incident of war.

(Exhibits 514, 515.)

No. 244. Lubao, Pampanga. Claim for rental and damages to church and convent, amounting to ₱5,200.

We recommend payment of rent, sixteen months, at ₱80 per month, ₱1,280; damages, ₱280; total, ₱1,560.

(Exhibits 516-518.)

No. 245. Bolinao, Zambales. Claim for rental and damages to convent, amounting to ₱1,900.

We recommend payment of rent, twenty-nine months, at ₱45 per month, ₱1,305; damages, ₱100; total, ₱1,405.

(Exhibits 519, 520.)

No. 246. Candelaria, Zambales. Claim for rental and damages to church and convent, amounting to ₱1,155.70.

We recommend payment of rent as follows: Convent, eighteen months, at ₱25 per month, ₱450; church, seven months, at ₱10 per month, ₱70; no damages; total, ₱520.

(Exhibits 521, 522.)

No. 247. Santa Ana, Rizal. Claim for rental and damages to church and convent, amounting to ₱11,407.

We recommend payment of rent, seven months, at ₱125 per month, ₱875; damages, ₱500; total, ₱1,375.

(Exhibits 523.)

No. 248. Pateros, Rizal. Claim for damages to church and convent by fire, and effects of same, amounting to ₱76,670.

We recommend that nothing be paid, the destruction being an incident of war.

(Exhibit 524.)

No. 249. Hermosa, Bataan. Claim for rental and damages to convent, amounting to ₱1,998.

We recommend payment of rent, seventeen months, at ₱35 per month, ₱595; damages, ₱200; total, ₱795.

(Exhibits 525, 526.)

No. 250. Orion, Bataan. Claim for rental and damages to church, convent, and cemetery, amounting to ₱3,325.50.

We recommend payment of rent, eighteen months, at ₱120 per month, ₱2,160; damages, ₱200; total ₱2,360.

(Exhibits 527, 528.)

No. 251. Sampaloc, Manila. Claim for rental and damages to cemetery, amounting to ₱500.

We recommend payment of rent, ₱260; no damages; total, ₱260.
(Exhibits 529, 530.)

No. 252. San Miguel, Manila. Claim for damages to cemetery, amounting to ₱300.

We recommend that nothing be paid, damages being an incident of war.
(Exhibits 530, 531.)

No. 253. Santa Cruz, Manila. Claim for damages to cemetery, amounting to ₱2,000.

We recommend that nothing be paid, damages being an incident of war.
(Exhibits 532, 533.)

No. 254. Binondo, Manila. Claim for rental and damages to chapel and cemetery, amounting to ₱1,548.34.

We recommend payment of rent, ₱748.34; no damages.
(Exhibits 534, 535.)

No. 255. Apalit, Pampanga. Claim for rental and damages to convent, amounting to ₱5,975.

We recommend payment of rent, twenty-seven months, at ₱80 per month, ₱2,160; damages, ₱116; total, ₱2,276.
(Exhibits 536, 537.)

No. 256. Paco, Manila. Claim for damages to church, convent, and effects, amounting to ₱300,000 (amount of ₱554,785, as stated in Exhibit B, was taken from an abstract and is incorrect).

We recommend that nothing be paid.
(Exhibits B, C, and 538, 539.)

No. 257. Hagonoy, Bulacan. Claim for rent and damages to convent, amounting to ₱8,500.

We recommend payment of rent, twenty-five and one-half months, at ₱80 per month, ₱2,040; damages, ₱1,500; total, ₱3,540.
(Exhibits 540-542.)

No. 258. Beaterio, Manila. Claim for rent and damages to building amounting to ₱4,480.65.

We recommend payment of rent, twelve months, at ₱200 per month, ₱2,400; damages, ₱500; total, ₱2,900.
(Exhibits 543-545.)

No. 259. Ormoc, Leyte. Claim for rent of convent amounting to ₱16.67.

We recommend that this amount be paid.
(Exhibits 546, 547.)

No. 260. Butuan, Surigao. Claim for damages by fire and loot of church amounting to ₱560.

We recommend that nothing be paid, as one was act of war, the other wanton.
(Exhibit 548.)

No. 261. Tanauan, Batangas. Claim for rent and damages to church and convent amounting to ₱18,973.26.

We recommend payment of rent: Convent, forty months, at ₱120 per month, ₱4,800; church, four months, at ₱70 per month, ₱280; addition, thirty-six months, at ₱30 per month, ₱1,080; cemetery, thirty-six months, at ₱10 per month, ₱360; damages, ₱6,500; total, ₱13,020.
(Exhibits 549-552.)

No. 262. Naujan, Mindoro. Claim for rent and damages to convent amounting to ₱3,535.

We recommend payment of rent, thirteen months, at ₱20 per month, ₱260; damages, ₱240; total, ₱500.
(Exhibits 553, 554.)

No. 263. Alfonso, Cavite. Claim for rent of convent amounting to ₱250.

We recommend that nothing be paid, as claim is one against the insular government.
(Exhibit 555.)

No. 264. Talisay, Batangas. Claim for damages to church convent, and effects by fire, amounting to ₱3,534.75.

We recommend that nothing be paid.
(Exhibits 556, 557.)

No. 265. Calamba, Laguna. Claim for rent and damages to convent amounting to ₱10,744.

We recommend payment of rent, 45 months, at ₱70 per month, ₱3,150; damages, ₱400; total, ₱3,550.

(Exhibits 558-562.)

No. 266. Davao, Mindanao. Claim for rent and damages to convent amounting to ₱1,200.

We recommend payment of rent, nine months, at ₱65 per month, ₱585; damages, ₱75; total, ₱660.

(Exhibits 563-567.)

No. 267. Catmon, Cebu. Claim for rent and damages to church amounting to ₱1,719.55.

We recommend payment of rent, ₱800; damages, ₱200; total, ₱1,000.

(Exhibits 568, 569.)

No. 268. Tanay, Rizal. Claim for rent and damages to church and convent amounting to ₱13,640.

We recommend payment of rent, February 12, 1900, to October 12, 1905, sixty-eight months, at ₱75 per month, ₱5,100; damages, ₱1,000; total, ₱6,100.

(Exhibits 570-574.)

The board thereupon adjourned to meet at the call of the president, from day to day.

J. W. MOORE,

First Lieutenant, Second Cavalry.

HEADQUARTERS PHILIPPINES DIVISION.

Manila, P. I., January 15, 1906.

The board met pursuant to adjournment.

Present: All the members.

The board then proceeded to consider and pass upon the following cases:

No. 269. Cavinti, Laguna. Claim for rent and damages to church property, amounting to ₱850.

We recommend payment of rent, ₱420; damages, ₱50; total, ₱470.

(Exhibits 575, 576.)

No. 270. Louislana, Laguna. Claim for rent and damages to church property, amounting to ₱400.

We recommend payment of rent, ₱350; no damages.

(Exhibits 577, 578.)

No. 271. Pila, Laguna. Claim for rent and damages to church property, amounting to ₱5,940.

We recommend payment of rent, ₱1,120; damages, ₱100; total, ₱1,220.

(Exhibits 579, 580.)

No. 272. Mandaue, Cebu. Claim for damages, amounting to ₱1,935.

We recommend that nothing be paid.

(Exhibits 581-583.)

No. 273. Tuburan, Cebu. Claim for rent and damages to church property, amounting to ₱680.

We recommend payment of rent, ₱510; no damages.

(Exhibits 584, 585.)

No. 274. Borbon, Cebu. Claim for rent and damages to church property, amounting to ₱5,760.

We recommend payment of rent, ₱250; no damages.

(Exhibits 586, 587.)

No. 275. Loreto, Dinagat Island. Claim for damages, amounting to ₱27,000.

We recommend that nothing be paid.

(Exhibit 588.)

No. 276. Candalaria, Tayabas. Claim for rent and damages to church property, amounting to ₱899.

We recommend payment of rent, ₱300; damages, ₱100; total, ₱400.

(Exhibits 589, 590.)

- No. 277. Pagbilao, Tayabas. Claim for rent and damages to church property, amounting to ₱3,675.
We recommend payment of rent, ₱2,220; damages, ₱200; total, ₱2,420. (Exhibits 591, 592.)
- No. 278. Maragondon, Cavite. Claim for rent and damages to church property, amounting to ₱2,000.
We recommend payment of rent, ₱800; no damages. (Exhibits 593-596.)
- No. 279. Tayug, Pangasinan. Claim for rent and damages to church property, amounting to ₱8,366.50.
We recommend payment of rent, ₱2,700; no damages. (Exhibits 597-599.)
- No. 280. Asingan, Pangasinan. Claim for rent and damages to church property, amounting to ₱5,300.
We recommend payment of rent, ₱600; no damages. (Exhibits 600-602.)
- No. 281. San Jacinto, Pangasinan. Claim for rent and damages to church property, amounting to ₱11,912.75.
We recommend payment of rent, ₱1,265; damages ₱1,300; total, ₱2,565. (Exhibits 603-605.)
- No. 282. San Ildefonso, Ilocos Sur. Claim for damages to church property, amounting to ₱1,018.56.
We recommend payment of damages, ₱500. (Exhibits 606, 607.)
- No. 283. San Esteban, Ilocos Sur. Claim for rent and damages to church property, amounting to ₱978.
We recommend payment of rent, ₱440; damages, ₱150; total, ₱590. (Exhibits 608, 609.)
- No. 284. Victoria, Tarlac. Claim for rent and damages to church property, amounting to ₱3,640.
We recommend payment of rent, ₱1,300; no damages. (Exhibits 610-613.)
- No. 285. Cuenca, Batangas. Claim for rent and damages to church property, amounting to ₱638.25.
We recommend the payment of rent, ₱270; damages, ₱50; total, ₱320. (Exhibits 614, 615.)
- No. 286. Batangas, Batangas. Claim for rental and damages to church and convent, amounting to ₱11,199.35.
We recommend payment of rent, ₱4,725; no damages. (Exhibits 616-629.)
- No. 287. Zumarraga, Samar. Claim for rental and damages to convent, amounting to ₱397.
We recommend the payment of rent, ₱80; no damages. (Exhibits 630-632.)
- No. 288. Manaoag, Pangasinan. Claim for rental and damages to church and convent, amounting to ₱4,774.
We recommend the payment of rent, twenty-six months, at ₱75 per month, ₱1,950; damages, ₱400; total, ₱2,350. (Exhibits 633-640.)
- No. 289. San Manuel, Pangasinan. Claim for damages to church and convent, amounting to ₱500.
We recommend payment of damages ₱200. (Exhibits 614-645.)
- No. 290. Taal, Batangas. Claim for rental and damages to church and convent, amounting to ₱18,885.
We recommend the payment of rent, old church and convent, forty-two months, at ₱35 per month, ₱1,470; new church and convent, forty-two months, at ₱40 per month, ₱3,780; corral, forty-two months, at ₱12.50 per month, ₱525; total for rent, ₱5,775; damages, ₱850. Total, ₱6,625. (Exhibits 646-652.)
- No. 291. Tiaong, Tayabas. Claim for rental and damages to church and convent, amounting to ₱3,930.
We recommend payment of rent, twenty-four months, at ₱100 per month, ₱2,400; no damages. (Exhibits 653-657.)

- No. 292. Ibaan, Batangas. Claim for rental and damages to church and convent, amounting to ₱1,834.

We recommend payment of rent, twenty-five months, at ₱50 per month, ₱1,250; no damages.

(Exhibits 658-662.)

- No. 293. Quilingua, Bulacan. Claim for rental and damages to church and convent, amounting to ₱3,335.

We recommend payment of rent, church, two months, at ₱40 per month, ₱80; convent, thirty-four months, at ₱50 per month, ₱700; damages, ₱300; total, ₱2,080.

(Exhibits 663-665.)

- No. 294. Binalonan, Pangasinan. Claim for rental and damages to convent, amounting to ₱6,200.

We recommend payment of rent, twenty-seven months, at ₱60 per month, ₱1,620; damages, ₱2,100; total, ₱3,720.

(Exhibits 666-674.)

- No. 295. Taysan, Batangas. Claim for rent and damages to convent, amounting to ₱929.

We recommend payment of rent, ₱375; no damages.

(Exhibits 675-677.)

- No. 296. Bamban, Tarlac. Claim for rental and damages, church and convent, amounting to ₱1,385.

We recommend payment of rent, forty-one months, at ₱25 per month, ₱1,025; damages, ₱100; total, ₱1,125.

(Exhibits 678-681.)

- No. 297. Pamplona, Ambos Camarines. Claim for damages to convent, amounting to ₱576.

We recommend that nothing be paid.

(Exhibits 682, 683.)

- No. 298. Naga, Ambos Camarines. Claim for rental and damages to convent, amounting to ₱5,248.

We recommend payment of rent, ₱900; damages, ₱160; total, ₱1,060.

(Exhibits 684-691.)

- No. 299. San Francisco de Malabon, Cavite. Claim for rental and damages to church and convent, amounting to ₱10,866.

We recommend payment of rent, forty-five months, at ₱150 per month, ₱6,750; no damages.

(Exhibits 692-695.)

- No. 300. Dumanjug, Cebu. Claim for rental and damages to church and convent, amounting to ₱1,840.

We recommend payment of rent, twelve months, at ₱45 per month, ₱540; no damages.

(Exhibits 696-701.)

- No. 301. Tigaon, Ambos Camarines. Claim for rent and damages to church and convent, amounting to ₱3,553.

We recommend payment of rent, fifteen months, at ₱60 per month, ₱900; damages, ₱700; total, ₱1,600.

(Exhibits 702-705.)

- No. 302. Pagsanjan, Laguna. Claim for rental and damages to church and convent, amounting to ₱8,911.

We recommend payment of rent for convent, twenty-nine months, at ₱70 per month, ₱2,030; for church, four months, at ₱50 per month, ₱200; damages, ₱450; total, ₱2,680.

(Exhibits 706-709.)

- No. 303. Sampaloc, Tayabas. Claim for rental and damages to church, amounting to ₱1,88.50.

We recommend payment of rent, five months, at ₱20 per month, ₱100; damages, ₱50; total, ₱150.

(Exhibits 710, 711.)

- No. 304. Pitogo, Tayabas. Claim rental for convent, amounting to \$140.

We recommend payment of rent, seven months, at ₱10 per month, ₱70.

(Exhibits 712-715.)

- No. 305. Santa Maria, Laguna. Claim for rental and damage to convent, amounting to ₱1,431.

We recommend payment of rent, ten months, at ₱30 per month, ₱300; no damage; total, ₱300.

(Exhibits 716-720.)

- No. 306. Laoag, Ilocos Norte. Claim for rental and damages to church and convent, amounting to ₱67,068.25.
We recommend payment of rent, thirty-six months, at ₱200 per month, ₱7,200; damages, ₱400; total, ₱7,600.
(Exhibits 721-725.)
- No. 307. Cavite Viejo, Cavite. Claim for rental and damages to church and convent, amounting to ₱10,700.
We recommend payment of rent for yard, nineteen months, at ₱12 per month, ₱228; no damages; total, ₱228.
(Exhibits 726-729.)
- No. 308. Calauan, Laguna. Claim for rental and damages to convent, amounting to ₱1,925.
We recommend payment of rent, six months, at ₱25 per month, ₱150; damages, ₱200; total, ₱350.
(Exhibits 730-734.)
- No. 309. Bacoor, Cavite. Claim for rental and damages to church and convent, amounting to ₱17,600.
We recommend payment of rent, twenty months, at ₱60 per month, ₱1,200; damages, ₱1,500; total, ₱2,700.
(Exhibits 735-742.)
- No. 310. Burauen, Leyte. Claim for rental and damages to church and convent, amounting to ₱5,025.
We recommend payment of rent, ₱100; no damages; total, ₱100.
(Exhibits 743, 744.)
- No. 311. Basey, Samar. Claim for rental and damages to church and convent, amounting to ₱17,624.
We recommend payment of rent, ₱2,100; no damages; total, ₱2,100.
(Exhibits 745-752.)
- No. 312. Cagayan, Mindanao. Claim for rental and damages to church and convent, amounting to ₱3,317.
We recommend payment of rent, ten months, at ₱40 per month, ₱400; damages, ₱150; total, ₱550.
(Exhibits 753-755.)
- No. 313. Santiago, Ilocos Sur. Claim for rental and damages to church and convent, amounting to ₱1,015.
We recommend payment of rent, eight months, at ₱30 per month, ₱240; damages, ₱75; total, ₱315.
(Exhibits 756-759.)
- No. 314. Lumban, Laguna. Claim for rental and damages to church and convent, amounting to ₱3,670.
We recommend payment of rent, seventeen months, at ₱80 per month, ₱1,360; damages, ₱300; total, ₱1,660.
(Exhibits 760, 761.)
- No. 315. Tayabas, Tayabas. Claim for rental and damages to church and convent, amounting to ₱2,470.
We recommend payment of rent, twenty-four months, at ₱50 per month, ₱1,200; no damages; total, ₱1,200.
(Exhibits 762-764.)
- No. 316. Maripipi, Leyte. Claim for destruction of church and convent by fire; no estimate of value.
We recommend nothing to be paid, the destruction being an incident of warfare.
(Exhibit 765.)
- No. 317. San Juan del Monte, Rizal. Claim for rental and damages to church and convent, amounting to ₱14,545.
We recommend payment of rent, twenty-four months, at ₱50 per month, ₱1,200; no damages. Total, ₱1,200.
(Exhibits 766-770.)
- No. 318. Jassan, Mindanao. Claim rent in sum of ₱150.
We recommend payment of rent, four months, at ₱30 per month, ₱120.
(Exhibits 771, 772.)
- No. 319. Sand Leonardo, Nueva Ecija. Claim for rental and damages to church and convent, amounting to ₱1,320.
We recommend payment of rent, ₱1,000; no damages.
(Exhibits 773, 774.)

- No. 320. Torrijos, Marinduque. Claim for rental and damages to church and convent, amounting to ₱605.
We recommend payment of rent for church, ₱40; for convent, ₱150; damages, ₱50; total, ₱240.
(Exhibits 775, 776.)
- No. 321. Paracale, Ambos Camarines. Claim for rental and damages to church and convent, amounting to ₱1,900.
We recommend payment of rent, twenty months, at ₱25 per month, ₱500; damages, ₱100; total, ₱600.
(Exhibits 777-779.)
- No. 322. Malitbog, Leyte, Matalom, Leyte. Claim for ₱4,157.03, money of church seized by the Insurgent Lukban in 1899.
We recommend that nothing be paid.
(Exhibits (B and C, 780-782.)
- No. 323. Dapitan, Mindanao. Claim damages to convent, amounting to ₱514.
We recommend payment of ₱50 as damages; no rent.
(Exhibits 783-785.)
- No. 324. Alabat, Tayabas. Claim for rental of convent, ₱101.46.
We recommend that nothing be paid.
(Exhibits 786-788.)
- No. 325. Paudan, Albay. Claim for rental of convent, amounting to ₱377.
We recommend that nothing be paid.
(Exhibit 789.)
- No. 326. Minalabag, Ambos Camarines. Claim for rental and damages to convent, amounting to ₱765.
We recommend that nothing be paid.
(Exhibit 790.)
- No. 327. Angadanan, Isabela. Claim for damages to church and convent, amounting to ₱620.
We recommend payment of damages ₱250; no rent.
(Exhibits 791-795.)
- No. 328. Bagabag, Nueva Vizcaya. Claim for rent of convent, twenty-four and one-half months, at ₱150 per month, ₱3,675.
We recommend payment of rent, twenty-four and one-half months, at ₱75 per month, ₱1,837.50; no damages.
(Exhibits 796-800.)
- No. 329. Dupax, Nueva Vizcaya. Claim for rent of convent, thirteen months, at ₱150 per month, ₱1,950.
We recommend payment of rent, thirteen months, at ₱65 per month, ₱845; no damages.
(Exhibits 800-802.)
- No. 330. Solano, Nueva Vizcaya. Claim for rent of convent, twenty-four and one-half months, at ₱50 per month, ₱1,225.
We recommend payment of rent, twenty-four months, at ₱25 per month, ₱600.
(Exhibits 800, 803, 804.)
- No. 331. Rosales, Nueva Ecija. Claim for rent and damages to church and convent, amounting to ₱92,900.
We recommend payment of rent, sixteen months, at ₱100 per month, ₱1,600; no damages.
(Exhibits 805-807.)
- No. 332. Santa Maria, Isabela. Claim for rent and damages to church and convent, amounting to ₱1,976.
We recommend payment of rent, fifteen months, at ₱33.33½ per month, ₱500; damages, ₱160; total, ₱660.
(Exhibits 808-812.)
- No. 333. Calabanga, Ambos Camarines. Claim for damages to church and convent, amounting to ₱1,915.
We recommend payment as damages, ₱750; no rent.
(Exhibits 813-815.)
- No. 334. Ilbmanan, Ambos Camarines. Claim for damages to church and convent, amounting to ₱5,530.
We recommend that nothing be paid. (See case 44.)
(Exhibits 816, 817.)
- No. 335. Maynít, Mindanao. Claim rent and damages to church and convent, amounting to ₱674.
We recommend payment of rent; ₱90; no damages.
(Exhibits 818-820.)

- No. 336. San Quentin, Pangasinan. Claim rent for convent, amounting to ₱4,800.
We recommend payment of rent, twenty-four months, at ₱55 per month, ₱1,320; no damages.
(Exhibits 821, 822.)
- No. 337. Pasacao, Ambos Camarines. Claim rent and damages to church and convent, amounting to ₱1,610.
We recommend payment of rent, ten months, at ₱30 per month, ₱300; damages, ₱300; total, ₱600.
(Exhibits 823, 824.)
- No. 338. Gumaca, Tayabas. Claim rent and damages to convent, amounting to ₱6,428.
We recommend payment of rent, twelve months, at ₱35 per month, ₱420; damages, ₱25; total, ₱445.
(Exhibits 825-827.)
- No. 339. Pilar, Abra. Damages to church and convent, amounting to ₱6,697.
We recommend nothing be paid.
(Exhibits 828, 829.)
- No. 340. San José, Abra. Claim for rent and damages to church, amounting to ₱700.
We recommend payment of rent, ₱20; damages, ₱80; total, ₱100.
(Exhibits 830-833.)
- No. 341. Ville Vieja, Abra. Claim for rent and damages to church and convent, amounting to ₱3,090.
We recommend payment of rent, ₱550; no damages.
(Exhibits 834-841.)
- No. 342. Nueva Caceres, Ambos Camarines. Claim for rent and damages to Episcopal palace, seminary, corral, San Felipe, cemetery, etc., amounting to ₱46,059.07.
We recommend payment as follows: Rent, palace, thirty-seven months, at ₱400, ₱14,800; damages, palace, ₱640; rent, cemetery, ₱664; rent, seminary, twenty-six months, at ₱220, ₱5,720; rent, corral, forty-five months, at ₱35, ₱1,575; rent, San Felipe, sixteen months, at ₱16, ₱256; damages, seminary, corral, etc., ₱565; total, ₱24,220.
(Exhibits 842-877.)
- No. 343. San Mateo, Rizal. Claim for rent and damages to convent, amounting to ₱11,279.
We recommend payment of rent, fifty-four months, at ₱60 per month, ₱3,240; damages, ₱100; total, ₱3,340.
(Exhibits 878-881.)
- No. 344. Montalban, Rizal. Claim for rent and damages to church, amounting to ₱655.
We recommend payment of rent, six months, at ₱50 per month, ₱300; no damages.
(Exhibit 882.)
- No. 345. Marikina, Rizal. Claim damages to church and convent, amounting to ₱71,193.50.
We recommend that nothing be paid.
(Exhibit 883.)
- No. 346. Indang, Cavite. Claim for rent of convent, amounting to ₱5,220.
We recommend payment of rent, thirty and one-half months, at ₱50 per month, ₱1,525 (₱950 properly a claim against the insular government).
(Exhibits 884-886.)
- No. 347. Lilio, Laguna. Claim for damages to church and convent, amounting to ₱5,413.40.
We recommend that nothing be paid.
(NOTE.—We recommend that the statement against Captain Stamper be investigated.)
(Exhibit 887.)
- No. 348. Longos, Laguna. Claim for rent and damages to convent, amounting to ₱650.
We recommend payment of rent, six months, at ₱20 per month, ₱120; no damages.
(Exhibits 888-889.)

No. 349. Majayjay, Laguna. Claim for rent and damages to church and convent, amounting to ₱11,349.14.

We recommend payment as follows: Rent, convent, thirty months, at ₱80, ₱2,400; rent, church, six months, at ₱40, ₱240; rent, school, eighteen months, at ₱25, ₱450; damages, ₱250; total, ₱3,340.

(Exhibits 890-894.)

No. 350. Vigan, Ilocos Sur. Claim for rent and damage to palace, seminary, girls' school, and corral, amounting to ₱67,500.80.

We recommend payment as follows: Palace, rent, twenty months, at ₱175 per month, ₱3,500; palace, damages, ₱1,200; seminary, rent, thirty-seven months, at ₱200 per month, ₱7,400; seminary (no damages); girls' school, rent, thirty-seven months, at ₱175, ₱6,475; girls' school, damages, ₱1,200; corral, rent of grounds, thirty-seven months, at ₱30, ₱1,110; total, ₱20,885.

(Exhibits 895-951.)

No. 351. Goa, Ambos Camarines. Claim for rent and damages to church and convent, amounting to ₱6,526.90.

We recommend payment of rent, eighteen months, at ₱100 per month, ₱1,800; damages, ₱2,200; total, ₱4,000.

(Exhibits 952-955.)

No. 352. Tagoloan, Misamis, and Santa Ana, Misamis. Claim for rent, church and convent, ₱488.29.

We recommend payment of rent, ₱400.

(Exhibit 956.)

No. 353. Ligao, Albay. Claim for rent and damages to church and convent, amounting to ₱5,940.

We recommend payment as follows: Church, rent, three months, at ₱30 per month, ₱90; convent, rent, nineteen months, at ₱125 per month, ₱2,375; damages, ₱1,000; total, ₱3,465.

(Exhibits 957-959.)

No. 354. Catabalogan, Samar. Claim for rent, amounting to ₱600.

We recommend payment of rent, three months, at ₱100 per month, ₱300; total, ₱300.

(Exhibits 960-962.)

No. 355. Calbiga, Samar. Claim rent and damages to church and convent, amounting to ₱8,450.

We recommend payment of rent, ten months, at ₱80 per month, ₱800; no damages.

(Exhibit 963.)

No. 356. Aloran, Misamis. Claim for rent and damages to church property, amounting to ₱920.

We recommend payment of rent, eight months, at ₱40 per month, ₱320; damages, ₱200; total, ₱520.

(Exhibits 964-965.)

No. 357. Magaldan, Pangasinan. Claim for rent and damages to church and convent, amounting to ₱2,665.

We recommend payment of rent, thirty-one and one-half months, at ₱25 per month, ₱787.50; no damages.

(Exhibits 966-971.)

No. 358. Concepcion, Tarlac. Claim for rent and damages to convent, amounting to ₱3,986.

We recommend payment of rent, twenty-six months, at ₱60 per month, ₱1,460; damages, ₱150; total, ₱1,610.

(Exhibits 972-974.)

No. 359. San Nicolas, Pangasinan. Claim for rent and damages to church, amounting to ₱630.

We recommend payment of rent, one month, at ₱50; no damages.

(Exhibits 975-978.)

No. 360. Hilongos, Leyte. Claim for rent and damages, church and convent, amounting to ₱205,050.

We recommend payment of rent, seven months, at ₱100 per month, ₱700; no damages. (Even if substantiated and act of war; but American troops left January 19, 1901.)

(Exhibit 979.)

No. 361. Tuguegarac, Cagayan. Claim for rent and damages, convent, house, and storehouse, amounting to ₱8,470.

We recommend payment of rent as follows: Convent, thirty-three months, at ₱110 per month, ₱3,630; house, twenty-five months, at ₱50 per month,

₱1,250; storehouse, twenty-six months, at ₱5 per month, ₱130; total, ₱5,010; no damages.

(Exhibits 980-986.)

- No. 362. Tubugan, Iloilo. Claim for damages by looting church and convent, amounting to ₱32,344.

We recommend that nothing be paid, for even if claim was substantiated it was the unlawful acts of the service.

(Exhibits 987-992.)

- No. 363. Calinog, Iloilo. Claim for damages to church and convent, amounting to ₱9,720.

We recommend that nothing be paid. Even if substantiated, it would be an act of war.

(Exhibits 993-997.)

- No. 364. Lambunac, Iloilo. Claim for damages to church and convent, amounting to ₱11,053.41.

We recommend that nothing be paid. Even if substantiated, it would be an act of war.

(Exhibits 998-1001.)

- No. 365. Pototan, Iloilo. Claim for rent and damages to convent, amounting to ₱1,750.

We recommend payment of rent, twenty-nine months, at ₱50 per month, ₱1,450; damages, ₱150; total, ₱1,600.

(Exhibits 1002-1005.)

- No. 366. Bacolod, Negros. Claim for rent and damages, church and convent, amounting to ₱17,039.94.

We recommend payment of rent, forty-three months, at ₱200 per month, ₱8,600; damages, ₱500; total, ₱9,100.

(Exhibits 1006-1013.)

- No. 367. Tanjay, Negros. Claim for rent and damages, church and convent, amounting to ₱560.

We recommend payment of rent, seven months, at ₱50 per month, ₱350; no damages.

(Exhibits 1014-1018.)

- No. 368. Bugasong, Antique. Claim for rent, church and convent, amounting to ₱3,300.

We recommend payment of rent, twenty-two months, at ₱60 per month, ₱1,320; no damages.

(Exhibits 1019-1022.)

- No. 369. Maasin, Iloilo. Claim for rent and damages, church and convent, amounting to ₱2,000.

We recommend payment of rent, thirteen months, at ₱50 per month, ₱650; damages, ₱250; total, ₱900.

(Exhibits 1023-1031.)

- No. 370. Cabatuan, Iloilo. Claim for rent and damages, church and convent, amounting to ₱4,450.

We recommend payment of rent, twenty-four months, at ₱75 per month, ₱1,800; no damages.

(Exhibits 1032-1037.)

- No. 371. Mandurriao, Iloilo. Claim for damages church effects, amounting to ₱405.

We recommend that nothing be paid. Even if substantiated, it would be a case of looting.

(Exhibits 1038-1042.)

- No. 372. Alimodian, Iloilo. Claim damages to church property, amounting to ₱267.

We recommend that nothing be paid. Even if substantiated, it would be a case of looting.

(Exhibits 1043-1046.)

- No. 373. Duenas, Iloilo. Claim for damages to convent and effects by fire, amounting to ₱5,615.

We recommend that nothing be paid. Even if substantiated, it would be an act of war.

(Exhibits 1047-1050.)

- No. 374. La Castellana, Negros. Claim for rent and damages to convent amounting to ₱5,875.

We recommend payment of rent three months, ₱25 per month, ₱75; no damages.

(Exhibits 1051-1056.)

No. 375. Murela, Negros. Claim for rent and damages to church property, amounting to ₱854.75.

We recommend payment of rent six months, at ₱20 per month, ₱120; no damages.

(Exhibits 1057-1064.)

No. 376. Isabella, Negros. Claim for rent and damages to priest house and convent, amounting to ₱3,027.25.

We recommend payment for rent of priest house thirty-four months, at ₱20 per month, ₱680; rent of convent seven months, at ₱20 per month, ₱140; total rent, ₱820; no damages.

(Exhibits 1065-1072.)

No. 377. Jiniganan, Negros. Binalbagan, Negros. Claim for rent and damages to convent, amounting to ₱1,250.

We recommend payment of rent twelve months, at ₱40 per month, ₱480; damages, ₱250; total, ₱730.

(Exhibits 1073-1079.)

No. 378. Passi, Iloilo. Claim for damages to church and convent, amounting to ₱695.

We recommend nothing be paid, even if substantiated. It was the result of the looting.

(Exhibits 1080-1082.)

No. 379. Jaro, Iloilo. Claim for rent and damage to seminary, palace, hospital, convent, and cathedral, amounting to ₱117,899.

We recommend following: Rent of seminary thirty-four months, at ₱600, ₱20,400; damages to seminary, ₱2,840; rent of palace thirty-six months, at ₱100, ₱3,600; damages to palace, ₱1,100; rent of hospital seven months, at ₱100, ₱700; damages to hospital; convent rent for ten months, at ₱100, ₱1,000; damages to convent, ₱500; total, ₱30,140.

(Exhibits 1083-1109.)

No. 380. Lingayad, Pangasinan. Claim for rent and damages to convent, amounting to ₱9,874.26.

We recommend payment of rent thirty-six months, at ₱125 per month, ₱4,500; damages, ₱500; total, ₱5,000.

(Exhibits 1110-1112.)

No. 381. Umingan, Pangasinan. Claim for rent of church and convent, amounting to ₱5,600.

We recommend payment of rent fourteen months, at ₱100 per month, ₱1,400.

(Exhibits 1113, 1114.)

No. 382. Dagami, Pastrana, Tabontabon, Leyte. Claim for damages and rent, amounting to ₱8,049.

We recommend payment of rent for fifteen months, at ₱150, ₱2,275; no damages.

(Exhibits 1115-1118.)

No. 383. Loay, Bohol. Claim for rent and damage, church and convent, amounting to ₱13,330.

We recommend payment of rent, ₱330; no damages.

(Exhibits 1119-1121.)

No. 384. Johonga, Surigao. Claim for rent and damages for church and convent, amounting to ₱3,744.

We recommend payment of rent, ₱210; no damages.

(Exhibit 1122.)

No. 385. Tarangnan, Samar. Rent and damages, church and convent, amounting to ₱105.50.

We recommend this be paid.

(Exhibits 1123, 1124.)

No. 386. Tabogan, Cebu. Rent and damages, church and convent, amounting to ₱3,286.

We recommend payment of rent, ₱280; no damages.

(Exhibits 1125, 1126.)

No. 387. Catanuan, Tayabas. Claims damages, church property, amounting to ₱500.

We recommend damages, ₱350.

(Exhibit 1127.)

No. 388. Palapag, Samar. Claims damages to church, amounting to ₱2,000.

We recommend that nothing be paid; troops occupied municipal buildings only.

(Exhibit 1128.)

- No. 389. Oquendo, Samar. Claims damages to church and convent, amounting to ₱13,842.
We recommend damages, ₱3,000.
(Exhibit 1129.)
- No. 390. Albay, Albay. Claims rent and damages, convent, amounting to ₱6,406.
We recommend payment of rent five months, at ₱150 per month, ₱750; no damages.
(Exhibits 1130-1132.)
- No. 391. Mauban, Tayabas. Claims rent and damages to convent, amounting to ₱2,150.
We recommend payment of rent, twenty-seven months, at ₱40 per month, ₱1,080; damages, ₱400; total, ₱1,480.
(Exhibits 1133-1135.)
- No. 392. Segod, Cebu. Damages to church and property by fire, amounting to ₱30,643.38.
We recommend that nothing be paid; act of war.
(Exhibits 1136-1139.)
- No. 393. San Jose, Ambos Camarines. Claim for rent, church property, amounting to ₱1,800.
We recommend payment of rent for eighteen months, at ₱100 per month; total, ₱1,800.
(Exhibits 1140, 1141.)
- No. 394. Lagonoy, Ambos Camarines. Claim rent and damages to convent, amounting to ₱2,212.
We recommend payment of rent for fourteen months, at ₱50 per month, ₱700; damages, ₱250; total, ₱950.
(Exhibits 1142-1145.)
- No. 395. Janluay, Iloilo. Claim rent, convent, amounting to ₱1,000.
We recommend that this be paid.
(Exhibits 1146-1148.)
- No. 396. Jimamailan, Negros. Claim rent, convent, amounting to ₱960.
We recommend that this be paid.
(Exhibits 1148-1149.)
- No. 397. Cadiz, Negros. Claim rent, convent, amounting to ₱1,680.
We recommend payment of rent, sixteen months, at ₱50 per month, ₱800.
(Exhibits 1150, 1151.)
- No. 298. Manapla, Negros. Claim rent of convent, amounting to ₱1,920.
We recommend payment of rent twenty-four months, at ₱50 per month, ₱1,200.
(Exhibits 1151-1153.)
- No. 399. Saravia, Negros. Claim for rent of convent, amounting to ₱1,800.
We recommend payment of rent, fourteen months, at ₱40 per month, ₱560.
(Exhibits 1154-1151.)

The board then proceeded to consider the letters and papers submitted by Bishop Dougherty referring to case No. 85, Magsingal, Ilocos Sur; case No. 101, Mamacpacan, Union; and case No. 110, Dolores, Abra. After full consideration, the board adheres to its former findings and recommendations.

- (Exhibits 1155-1165.)
- No. 400. Bacon, Sorsogon. Claim rent of church, amounting to ₱360.
We recommend that nothing be paid.
(Exhibits 1166, 1167.)
- No. 401. Daraga, Albay. Claim rent and damages, church and convent, amounting to ₱86,858.
We recommend payment for rent of church for fourteen months, at ₱70 per month; no rent for convent; no damages; total, ₱980.
(Exhibits 1167, 1168.)
- No. 402. Capalonga, Sorsogon. Claim damage to church property, amounting to ₱5,450.
We recommend that nothing be paid. Even if substantiated it would be a case of looting.
(Exhibit 1167.)

No. 403. Jiabong, Samar. Claim rent and damages, church and convent, amounting to ₱12,261.

We recommend payment of rent, sixteen months, at ₱20 per month, ₱320; damages, ₱1,000; total, ₱1,320.

(Exhibits 1169-1171.)

No. 404. Indan, Ambos Camarines. Claim rent and damage to church property, amounting to ₱5,353.

We recommend that nothing be paid. Building not occupied.

(Exhibits 1172-1176.)

No. 405. Santa Cruz, Cavite. Claim rent and damages, church and convent, amounting to ₱6,275.

We recommend payment of rent, forty-three months, at ₱60 per month, ₱2,580; damages, ₱600; total, ₱3,180.

(Exhibits 1177-1179.)

No. 406. Rosario, Cavite. Claim rent and damages, church and convent, amounting to ₱7,350.

We recommend payment of rent, fourteen months, at ₱20 per month, ₱280; damages, ₱1,050; total, ₱1,330.

(Exhibits 1180-1182.)

No. 407. Nagcarlan, Laguna. Claim for rent and damages, church and convent, amounting to ₱6,148.

We recommend payment of rent for twenty months, at ₱75 per month, ₱1,500; damages, ₱500; total, ₱2,000.

(Exhibit 1183.)

Recapitulation.

Amount claimed..... ₱4, 885, 926. 26

Amount recommended:

Rent..... ₱579, 598. 87

Damages..... 110, 093. 50

Total..... 689, 692. 37

Per cent, 14.11.

Additional allowances, per Exhibit D:

Rent..... 34, 158. 00

Damages..... 2, 210. 00

Total..... 36, 368. 00

Aggregate allowance, Philippine currency..... 726, 060. 37

Aggregate allowance, United States currency..... \$363, 030. 19

The following cases are included in this report in accordance with the instructions of the division commander, dated September 28, 1905 (Exhibit D):

	City.	Province.	Rent.	Damages.	Total.
No. 408.....	Silay.....	Negros.....	₱1,940.....		₱1,940
No. 409.....	Concepcion.....	Lepanto-Bontoc.....	102.....		102
No. 410.....	Carrangian.....	Nueva Ecija.....	180.....	₱50.....	230
No. 411.....	Cuyapo.....	do.....	720.....		720
No. 412.....	Dasol.....	Zambales.....	600.....		600
No. 413.....	Bantoc.....	Lepanto-Bontoc.....	112.....		112
No. 414.....	Agno.....	Zambales.....	525.....		525
No. 415.....	Ballincaguin.....	do.....	630.....		630
No. 416.....	Antipolo.....	Rizal.....	150.....		150
No. 417.....	Liloan.....	Cebu.....	520.....		520
No. 418.....	Danao.....	do.....	520.....		520
No. 419.....	Botolan.....	Zambales.....	1,200.....		1,200
No. 420.....	Carcar.....	Cebu.....	180.....		180
No. 421.....	San Juan.....	Batangas.....	1,600.....		1,600
No. 422.....	Guinayangan.....	Tayabas.....	755.....		755
No. 423.....	Balingao.....	Misamis.....	80.....		80
No. 424.....	Dumarao.....	Capiz.....	570.....		570
No. 425.....	Iba.....	Zambales.....	600.....		600
No. 426.....	Igbaras.....	Iloilo.....	480.....		480
No. 427.....	Mutiniupa.....	Rizal.....	810.....	150.....	960
No. 428.....	San Marcelino.....	Zambales.....	980.....	150.....	1,130
No. 429.....	San Felipe.....	do.....	1,440.....		1,440
No. 430.....	San Narciso.....	do.....	880.....		880
No. 431.....	San Antonio.....	do.....	80.....		80
No. 432.....	Mattl.....	Davao.....	180.....		180
No. 433.....	Subic.....	Zambales.....	400.....		400

	City.	Province.	Rent.	Damages.	Total.
No. 434.	Sevilla.	Ilocos Sur.	P84		P84
No. 435.	Palauig.	Zambales.	400		400
No. 436.	Mangarin.	Mindoro.	1,200	P400	1,600
No. 437.	Pantabangan.	Nueva Ecija.	625		625
No. 438.	Pinamalayan.	Mindoro.	40		40
No. 439.	Parang.	Cotabato.	360	60	420
No. 440.	Tigbauan.	Iloilo.	960		960
No. 441.	Santa Cruz.	Laguna.	60		60
No. 442.	Loculan.	Misamis.	150		150
No. 443.	Palpan.	Mindoro.	165		165
No. 444.	Jimenez.	Misamis.	1,200		1,200
No. 445.	Culion.	Culion.	150		150
No. 446.	Jaro.	Leyte.	1,320		1,320
No. 447.	Romblon.	Romblon.	570		570
No. 448.	Guiuan.	Samar.	70		70
No. 449.	Cabangan.	Zambales.	840		840
No. 450.	Guimbalao.	Negros.	190		190
No. 451.	Malinao.	Capiz.	100		100
No. 452.	Cavanasalan.	Negros.	660		660
No. 453.	Sagay.	do.	550		550
No. 454.	Bala.	do.	560		560
No. 455.	La Carlota.	do.	440		440
No. 456.	Bayawan.	do.	220		220
No. 457.	Guimbal.	Iloilo.	440		440
No. 458.	Guijulugan.	Negros.	480		480
No. 459.	Ibajay.	Capiz.	240		240
No. 460.	Calatrava.	Negros.	400		400
No. 461.	Oroquieta.	Misamis.	750		750
No. 462.	Leon.	Iloilo.	1,600		1,600
No. 463.	Santa Rosa.	Manila.	2,000	1,000	3,000
No. 464.	Binangonan.	Infanta.	120		120
No. 465.	La Loma.	Rizal.	920	400	1,320
No. 466.	La Trinidad.	Benguet.	50		50
Total			34,158	2,210	36,368

(Exhibits 1184-1258.)

Presenting this report of investigation and recommendation, the board submits therewith the following statement for the consideration of the reviewing authority:

In the examination of all claims presented by the church for occupation and use of church property by United States troops, and damages incident thereto and consequent upon said occupation, the board has been actuated by a desire to be fair and equitable in every instance; and fully believes its estimate of amount due from the United States to the Roman Catholic Church in the Philippines for rental and damages to be just or as nearly so as it is possible to make a settlement at this late date.

The claims of the church have been submitted in Spanish, the language best understood in the country. Translation of these claims have not been made and transmitted with this report for various reasons, among which may be mentioned absence of proper interpreters at command of board, consideration of time required to make such translation, and lack of necessity, as statement of total of claim is made in English in report of board.

The location of church property on which claim has been made for rental and damage is so widely distributed throughout the archipelago, and in some instances so inaccessible, that it has been deemed a matter of impossibility that a visit be made to each locality by the board as a body, or by the members separately, and therefore the necessity has arisen of making investigation and basing recommendation on examination of claim of church, reports of officers sent to investigate and report upon property, and such other pertinent information as could be obtained from records of various offices and other sources.

In due consideration of the claims presented by the church, the board has caused records to be searched for data, and have gathered information, in all ways available, until they have felt that enough was at hand on which to render a fair and just report. Before the convening of this board officers of the Army had been detailed to inspect the buildings occupied by United States troops in the various provinces and to make report upon, with estimate of value of rental and damages as the result of such occupation.

These reports have been submitted to the board and have been fully considered by them in basing their estimates.

In a number of cases, considering the size of the buildings, etc., it has been apparent that the officers making the reports have not reported on adequate rental, and in such cases the board has not hesitated to place the rental at what was deemed a reasonable amount. In all other cases, however, the board has felt that the officers on the ground, with full knowledge of all the conditions, were better able to judge than the members of the board on *ex parte* evidence.

To have secured direct testimony subject to personal examination on all disputed questions of fact would have delayed this report indefinitely.

For a proper consideration of these claims a knowledge of past conditions in the islands is essential.

The insurrection of 1896 and the following years, we are told by contemporary writers, was aimed at both the church and state, they being under the Spanish Government virtually one and the same, the animus being directed chiefly against the friars, who had fortress-like buildings and who occupied and cultivated by native labor large tracts of land, and who were therefore exceedingly prosperous, and, perhaps, by reason of this prosperity the more open to attack by agitators. During the progress of this insurrection in the provinces affected the churches and conventos were occupied alternately by insurgents and Spanish, and there was no doubt much destruction of church property or the property of the orders in the attack and defense of these outposts of the church. Writings of the time record many cases of bombardment of these places, burnings, lootings, and the use of materials of buildings as entrenchments and other means of defense.

No sufficient time elapsed between the end of the insurrection of 1896, as continued, and the insurrection against the Spanish Government in the summer of 1898 to allow of repair of damage already done or the reconstruction and rehabilitation of many of the parish churches and conventos destroyed or injured during the former insurrection. Between the termination of the first and the outbreak of the second insurrection the country was evidently overrun by *ladrones* and *pulajanes*—robbers and outlaws—who held the inhabitants in terror. The insurrection of 1896 extended in its scope to nearly all the islands of the archipelago, and was particularly virulent during the latter part in the Visayas and in parts of Mindanao. These same conditions were present during the insurrection of 1898 and the following year—the same destruction of church property and the property of the orders by the insurgent forces in the use of same as places of rally and defense, the same use of material for construction of outworks, and the same lootings and burnings on forced evacuation.

Similar damage, only to perhaps a greater extent, incident to the use of heavier guns by the Americans, followed from bombardment of such places, in some instances resulting in fire, with the consequent total or partial loss of the buildings.

It is to be regretted that these cases were not finally adjusted several years ago while the questions presented were fresh. Among the many causes that have contributed to the delay in settlement may be mentioned the disturbed condition of the country immediately following the collapse of the insurrection, the delay of the church in formulating and presenting their claims (the claims were received here in July, 1905), and the prevalent belief that the claims for rental and damages to church property would be considered and some adjustment made at the time the friar land questions were determined.

The officials of the Catholic Church state that they have experienced difficulty in securing statements and presenting claims for occupation and damage to their property in certain sections, the records of the church and church property being in the control of the Agilpayans, a hostile offshoot of the church, or in the hands of a hostile municipality. This difficulty has also been due to a certain extent to the severance of church and state and the consequent reduction of church revenue. War, pestilence, and famine have also had a serious effect in reducing church income.

In some towns, even after due diligence, it has been impossible for the church authorities to submit proper claims, and as money is equitably due from the United States for occupation by the United States forces, the board has, in accordance with the instructions of the division commander, included in its report all towns for which no claims were presented, yet which were shown by official reports to have been occupied.

This report, therefore, disposes of all church claims except those of certain religious orders who have filed with this board, through their attorneys, claims for rent and damages amounting to \$796,469.09 United States currency. Report on these cases will be rendered as soon as possible.

Many of the churches and conventos on these islands were built over a century ago, and while it is to be supposed that ordinary care has been taken in preservation of same, nevertheless it is a well-known fact that much deterioration must have taken place in the material of which the buildings are composed by the action of the elements and from the ravages of insects. Buildings deteriorate rapidly in such a climate as that prevalent here, and it is doubtful if much care was exercised or many if any repairs made during the period of insurrection in the islands, and as a result of such lack of care and repair small damages would increase in scope in a rapid manner. Times of war are serious within the zone of operations, for the noncombatants as well as for those engaged in actual hostilities, and in view of the disturbed conditions in most instances, occupation of church property in various parts of the Philippines has inured to the benefit of the church by prevention of spoliation by those in insurrection and other evil-minded persons and in many instances the occupancy has been a positive benefit rather than a detriment to their interests.

One of the hardest questions for the board to determine was the manner in which the amount to be paid for the occupation was to be

ascertained. From the very nature of the buildings, and from the fact that they were the only buildings in the towns of substantial construction, it was impossible to get any proper guide from commercial rates; and for the same reason it was virtually impossible to get any proper estimate of the value of the buildings and then to figure by percentages from that as to what would be a fair rental.

The damages resulting from prevention of religious services, on account of occupation of the church by United States forces, would be purely speculative, especially so when it is considered that in almost every instance where insurgents were in the vicinity or had been driven from the town by the United States troops, the priests either abandoned their charges and went voluntarily into the hills with the insurgents, or were taken by them by force and held as prisoners. The amount of interference with the conduct of religious services was very slight.

It was also suggested that we take a monthly rate as to the number of troops that occupied the buildings. In some cases, however, a very few troops occupied a very large building, while in other cases a number of troops were crowded into one of inferior construction, according to the demands of military necessity. In some instances the priest in charge of the parish lived in the convent with the troops, while in other cases the convent was completely occupied, and he was compelled to rent other quarters in the town for his living apartments.

After much discussion and reflection neither the rule of "quantum meruit" nor that of the damages inflicted to claimants was adopted, but all possible elements were taken into consideration by the board, so far as it was in its power to do so, in arriving at what they deemed to have been a fair and just rental for the occupation of the buildings.

It is a well known fact that when American forces entered a town they usually found that everything of value had been taken away from the churches and convents. In many of the towns church property had been completely sacked by the insurgents and criminal inhabitants, and in the other cases where the communities were still religious various persons carried off all movable property of value from the different churches and convents to their homes or in some other way concealed the same from the Americans.

It is also a well-established fact that during the early years of American occupation many native priests were aiders and abettors of the insurrection, and it may be possible that in some instances that fact may have influenced Americans who were called upon for reports upon questions of damages to and rentals of churches in a manner detrimental to the proper interests of the church.

On the other hand, a priest that a few years ago was hostile, especially one who had been punished by the Americans for his action, is apt not to be conservative in his estimate of the damage done to his parish.

The present heads of the church here, without full personal knowledge, have had to depend upon the recollection and judgment of natives in their estimates.

It is evidenced in many cases, as presented, that the estimate of damages has been made for entirely new equipment to replace old, worn out, and badly deteriorated material. The claims have in all cases been substantiated by the affidavits of two or more persons,

but the unreliability of native testimony of this kind is so well known that the board has had no hesitancy in rejecting claims that were improbable or that were contrary to official reports of responsible officers.

All occupation of churches and convents by United States troops were a military necessity, and as a rule they were the only buildings in the town suitable for protection of troops from inclemency of the weather, and of ample accommodation. If there were other suitable buildings in the town, those of the church, being of fortress-like construction, were more capable of successful defense, held control of the town, and their occupation therefore was essential.

In the advance of the American forces it was found that the insurgents generally occupied the churches and convents, and resisted the advance from these buildings, leaving them only when driven out by proper military actions. Upon the scattering of the American forces at times a very small garrison would be left in a place, and upon these occasions the insurgents often attacked the building with the purpose of capturing the defenders. In this manner a great amount of damage was done to the churches and convents, especially to the windows, shutters, roofs, etc., by rifle fire. It has been impossible to properly segregate damages of this sort from other damages that would be liable to have been done by troops living in the buildings.

In all cases of claim made for loss of church property by fire it has been considered after due investigation that such claims come under one of three heads, viz:

(1) Destruction as an act of war, either by being fired by the insurgents on the approach of the American troops, to keep them from falling into their hands; by being fired by bombardment by American troops; or by being destroyed by either force to prevent the buildings being used as cover by the opposing force.

(2) As a case of wanton damage, as being maliciously fired, or

(3) As an accident.

In none of these cases mentioned can the question of damages be considered or a recommendation for payment be made without violating the precedents that have heretofore guided the Government in the settlement of claims.

The word "convent" or "convento" as used in this report means the residence of the priest and includes "casa parochial," or parish house and "convento," which properly means the house occupied by one of the religious orders.

During all important sessions of the board the Catholic Church has had a representative present, and such representative has generally signified acquiescence in action taken by the board. At the various sessions the church has been represented by Right Rev. D. J. Dougherty, bishop of Nueva Segovia; Right Rev. Frederick Rooker, bishop of Jaro; Right Rev. Thomas A. Hendricks, bishop of Cebu; Apostolic Administrator Monsigneur Barlin, of the diocese of Nueva Caceres; Rev. Father M. Caruana, private secretary to the apostolic delegate, and the Reverend Father Sanchez, canon of the Cathedral of Manila, while the papal delegate has been constantly in touch with the work of the board, and suggestions from him have at all times received the consideration and attention they deserve.

The work of the board has been greatly facilitated by the attitude of all of these dignitaries who have recognized the difficulties to be

surmounted, and whose entire conduct has been marked by the greatest fairness.

The church authorities as at present constituted are our friends and helpers in the establishment and preservation of law and order in these islands, and are upholders of the authority of the United States. Their work here has been made hard by the amount of damage that the church has suffered due to war, and the amount awarded by the board, viz, \$363,030.19, will not begin to compensate for the loss so inflicted. This amount, however, is justly due from the United States, and is most urgently needed by the church in its work here.

It would be improper for us to close this report without mentioning the work of the officers and men that have served here with the Army of the Philippines in relation to the care they took of church property that came within their hands. Our people without distinction of religion have the greatest respect for all kinds of property, and especially is this marked when the property is dedicated to religion and education. Many of the officers took the same care of the property as if it had been the property of the United States and stringent orders forbidding damage were promulgated, and swift punishment followed the detection of persons failing to obey. It is believed that no army could have had a cleaner record.

In all assemblages of large numbers of men it is unfortunately true that some will commit acts detrimental to the good reputation of all. It happened here that a number of unknown individuals have committed waste, and the part to be most regretted is that such actions were not called to the attention of the commanding officers at or near the time of commission so that investigation could be made, the guilty properly disciplined, and due reparation made. There has not been a commanding general here who would not have been glad to have had the cooperation of the church authorities in the prompt reporting of all vandalism.

Our instructions, contained in exhibits "A," "B," "C," and "D," are inclosed and made a part of these proceedings, and to the best of our ability they have been carefully followed. All documents bearing on the individual claims, consisting of Exhibits 1 to 1258, inclusive, are likewise inclosed and made a part of these proceedings.

Under the provisions of the orders convening this board we have the honor to recommend that Congress be asked to appropriate the sum of \$363,030.19 United States currency for the payment of rentals of and damages to church property, Philippine Islands.

If Congress should in its liberality desire to compensate the church for the spoliation and carrying away of sacred ornaments, images, vestments, etc., we recommend that the sum of \$40,000 be paid, as, in the opinion of the board, this sum would be fully ample.

All of which is respectfully submitted.

J. A. HULL,
Lieutenant-Colonel, Judge-Advocate.

ALEXANDER O. BRODIE,
Lieutenant-Colonel, Military Secretary.

J. W. MOORE,
First Lieutenant, Second Cavalry.

CATHOLIC CHURCH CLAIMS IN THE PHILIPPINE ISLANDS.

COMMITTEE ON INSULAR AFFAIRS,
HOUSE OF REPRESENTATIVES,
January 20, 1908.

The committee met at 10 o'clock a. m., Hon. Henry Allen Cooper, chairman, presiding.

STATEMENT OF HON. WILLIAM H. TAFT, SECRETARY OF WAR.

The CHAIRMAN. This morning we are to hear the Secretary of War on the subject of the claims of the Catholic Church in the Philippine Islands for damages to property of the church during the insurrection.

Mr. Secretary, will you please proceed in your own way?

Secretary TAFT. Mr. Chairman, I am a little bit embarrassed in this matter, because I was before the committee last year and made a statement with reference to these claims, and I really have nothing to add in respect to them now.

The CHAIRMAN. There are new members of the committee, Mr. Secretary, who did not hear your statement of last year.

Secretary TAFT. Oh, yes. To go back to a little history, there was a revolution against Spain in the Philippines in the year 1896, led by Aguinaldo and other insurgent leaders. This revolution was finally settled by what was known as the treaty of Biac No Bato, which involved the payment of three installments of, I think, something like \$500,000 each—perhaps a little more—and certain other terms upon which, subsequently, the parties were never able to agree. That is, the parties were never able to agree on what the terms were, and the embers of the revolution were still glowing when we went into Manila Bay, where Admiral Dewey defeated the Spanish fleet. When he turned to Aguinaldo, who followed him over, and suggested that he assist him in taking Manila, Aguinaldo went ashore and re-organized his insurrecto forces.

During that insurrection of 1896 there had been, I think, some destruction of church property. The whole insurrection had an agrarian tinge in this, that the Spanish friars were regarded by the people as the agents of the Government in reporting to the Governor-General persons guilty of sedition, and that aroused a very bitter feeling against the friars. The friars owned in Cavite, where the insurrection began in each case, both in 1896 and in 1898, 125,000 acres of the best land.

The CHAIRMAN. In order that the record may be clear to the reader, when you refer to "agents of the Government" you of course mean agents of the Spanish Government.

Secretary TAFT. Yes, of the Spanish Government. In 1898 the feeling against the friars was shown in that 40 of them were killed and 300 imprisoned, and the American Government had to intervene to save a great many of them.

The ownership of the lands was in Cavite, in the old province of Manila, which lies just north of Manila, in Bulacan; in Morong, which is just east of Manila; and in Laguna, which is still further to the east, on the south side of the lake. All those things contributed to the feeling of bitterness against the friars. They had about 60,000 tenants on their lands—60,000 tenants who had to pay rent, but who paid no rent after the year 1896. Therefore, when the war came on there was a good deal of feeling against the friars; and while the feeling of the people toward the church as a church was friendly enough; against the parish priests, most of whom were Spanish friars, the feeling was very great. As a consequence, it was not very difficult for the leaders of the insurgents, especially Luna, to initiate a policy of destroying as much church property as they could, and so in his retreat north, Luna destroyed every church that he had time to destroy and also as many conventos as he could. That led to a very considerable loss to the church, for which the American Government was not in the slightest degree responsible. But as we enlarged our forces and sought to suppress the insurrection, which had ceased to be an organized rebellion of organized armies, but had become a guerilla warfare extending all over the islands, we had to enlarge a number of our posts until they reached some five hundred. In so doing, of course, we had to provide for the housing of our troops in that number of posts.

Now, in the Philippines, in a good many of the villages, the only buildings of strong material—to use the expression they use there—are the churches and conventos, the convento being what we call the rectory, the priest's house. This is ordinarily a building nearly as large as the church, with a good many rooms in it—a place in which entertainments are given, and in which the people have a sense of ownership, and which in the olden times was used, really, as the only hotel in which to entertain people. It was the only building, therefore, adapted for the occupation of the troops, unless they used the church. And so it was that these rectories in the islands and especially in those villages where the priests had been driven away, were used by the American troops.

This claim of \$363,000 for rent and damages during the occupation of the American troops in these rectories and churches of the islands is just an ordinary claim for rent and damages for occupation. That is all.

Now, I laid down the rule which was to govern the investigation by the board appointed to make it, of which I think Colonel Hull was the chairman. Perhaps the letter I wrote on that occasion is in the record.

Colonel HULL. This is the entire letter, Mr. Secretary [submitting same].

Mr. CRUMPACKER. That will go into the record as part of your remarks?

Secretary TAFT. Yes. It is dated September 2, 1905. I will read the letter if you wish to hear it.

The CHAIRMAN. We would like to hear it.

Secretary TAFT. It is addressed to General Corbin, who was then in command of the Philippines. I remember dictating it on board the transport *Logan*, in Manila Bay. (Reads:)

TRANSPORT LOGAN, September 2, 1905.

GENERAL: I am in receipt by reference of August 4 of the communication of August 3 to the military secretary of the Philippines Division by Lieutenant-Colonel Hull, judge-advocate and president of the board of church claims.

In this letter of August 3 Colonel Hull, on behalf of the board, requests instructions on certain points, which I now take up in their order:

First. Church property the title to which was probably in Spain.

Colonel Hull says that a number of buildings, such as the cathedral and various archbishops' palaces, were constructed mainly by the Spanish Government with Government money, were known as buildings of the state and were kept in repair from funds of the central treasury. He says that the question as to the ownership of the archbishop's palace at Nueva Caceres was before me while I was civil governor in the islands, but that no determination was made that would clearly guide the board, and asks whether, under the circumstances, the board shall report such claims for payment.

Personally, after having looked somewhat into this matter of title, I have no doubt whatever that the cathedral and the various archbishops' palaces belong to the Roman Catholic Church. It is true they were constructed partly out of funds furnished by the Spanish Government and on land belonging to the Government, but they were constructed in accordance with the concordat in which the Spanish Government agreed to furnish the churches and other ecclesiastical buildings used for ecclesiastical purposes, and by the very act of construction and of delivery to the church authorities the title in equity passed, whether what we would call legal title passed or not. For that reason I think the rents for such buildings and the damages in use and occupation ought to be paid by the Government of the United States to the Roman Catholic Church, and the board reporting, in cases where doubt arises, that such doubt exists, should nevertheless include in their award the amounts for the rent of such buildings and for damages in use and occupation.

Second. Damages incident to military operations and as an incident of war. Colonel Hull says that a number of such claims have been submitted—for example, the claim for Paco church, amounting to ₱554,785; that at the outbreak of hostilities in February, 1899, this church was occupied by insurgents, and was shelled by the United States artillery, and during the engagement the church was set on fire and destroyed.

As to this class of claims, of course no recovery can be had. The property was destroyed in the train of hostilities and the loss sustained must be borne by the persons upon whom inflicted. The Government of the United States can not be made liable under any such circumstances for any damages incident to war.

Third. Wanton damage by soldiers, theft of church property, etc.

It is said that a large number of cases with an immense aggregate have been filed which fall under this head; that so far as the board has been able to look into these cases it will be impossible to ascertain any facts in relation to this class; that the witnesses presented by the church will seldom swear to more than the goods disappeared while the Americans were in possession; that such a long time has elapsed that the statements will be so vague as to be almost impossible to contradict; that it is a well-known fact that some damage was done by American troops, but every case that came to the attention of the authorities was promptly investigated and the guilty persons punished and reparation made whenever it was possible to do so; that no complaints were filed by the church authorities while the events were fresh and evidence obtainable, and it is believed that it is now impracticable to make any investigation; that the improbability of many of the claims is shown by the fact that items of silver, etc., are claimed as taken away by the Americans, although the property had been abandoned by the church and was in the possession of the insurgents for a long time.

With respect to this class of claims, all I can say is that the board must use its sound discretion. Under the principles of law, which are well understood, the wanton destruction of property by an enlisted man or a number of enlisted men, without the authority either given in advance or conferred afterwards by ratification in *pais* of the commanding officer, does not make the United States responsible; but there must be in such cases many instances of damage or destruction

by enlisted men in the course of the occupation of the building that were either directly authorized by the commanding officer or were of such a character that the commanding officer must, in the occupation of the building, have anticipated that such damage would take place and so, in effect, authorized it.

Now, there is a class of damages usually incident to occupation by soldiers with respect to which the Government might always be made liable. The seizure, however, of sacred vessels, of sacred vestments, presumed only by their absence at the end of the occupation by the soldiers, I should regard as of very doubtful validity unless the evidence were direct tending to show that this course was taken by the soldiers and authorized by the officers, and especially are presumptions of this character not to be indulged in where there was previous occupation by the insurgents and where the evidence is not distinct of what the condition of the buildings was when entered and the presence of particular property when the United States entered into occupation. I do not intend to advise the board to be technical or to be illiberal in estimating damages to property ordinarily incident to occupation by troops who are not particularly careful of the property in which they live, but I do wish to advise against the allowance of large damages for the disappearance of particularly valuable vessels or vestments which were probably stolen long before the troops entered into occupation and with respect to which it is to be supposed the church authorities would exercise the utmost care in their preservation before the occupation of the property by the troops. I can not give more direct instructions on this point and must trust to the careful examination of the board in not making unreasonable and excessive recommendations, but in allowing everything in the way of damages which might reasonably have been anticipated by those familiar with the methods pursued by soldiers in an enemy's country in the occupation of buildings with the relaxation of discipline that follows such unusual circumstances.

Fourth. Damages done by the insurgents.

Of course no damages can be paid by the United States for injuries inflicted by the insurgents.

Fifth. Rentals and damages caused by servants of the civil government.

Of course such rentals and damages are not to be paid out of the Treasury of the United States, but if there is any claim sufficiently well established to justify the board to make recommendation for damages caused by agents of the civil government, they may very well make an estimate, and through the commanding general forward it to the Governor-General of the islands.

Colonel Hull concludes with the statement that it is the understanding of the board that the report will be made the basis of a recommendation by the War Department to Congress; that the church is not presenting its claims as to its strict legal rights, but with the intention of asking an equitable amount from the liberality of Congress, and that it is the desire of the board in its report to adopt a similar view and, while rejecting all claims that may be extortionate or exorbitant, to be guided by an honest endeavor to deal fairly and equitably with the claimants.

This conclusion of the board states correctly the attitude of the War Department in this matter, and a report based on this view will be received by the War Department and approved and forwarded to Congress with its earnest recommendation for appropriation.

Very respectfully,

WM. H. TAFT,
Secretary of War.

Maj. Gen. HENRY C. CORBIN, U. S. A.,
Commanding General Philippines Division, Manila.

Mr. CRUMPACKER. Mr. Secretary, I would like ask you a few questions in regard to the different classes of claims that have been investigated and have been submitted to us for consideration, including also the bases of liability, if there be any. In the first place, I understand that where an army appropriates property to its own use or occupies buildings for its own purposes—that is, property of non-combatants—it is responsible for the rent and for the damages that may result from its occupancy or use.

Secretary TAFT. Yes.

Mr. CRUMPACKER. And in all this class of cases there would be a liability on the part of the Federal Government for that part of damages or use?

Secretary TAFT. Yes.

Mr. CRUMPACKER. Now in the event that our troops occupied property and there were acts of vandalism or wanton destruction by our soldiers or prisoners of war that were confined in church property, I assume we would also be liable for those acts as incidents of our occupation, because we occupied the position of tenant, and the owner was unable to protect his property, and we assumed the responsibility of the tenant in charge to prevent acts of waste. What is your judgment as to that?

Secretary TAFT. I have laid it down pretty strictly in this letter. I should think the tenant would be liable in such a case for anything that he might reasonably anticipate by reason of the character of the tenancy. I think that the construction of the rule of law is that the Government is not liable for the wanton destruction of property against orders by the private soldier, but where the Government knows that the character of discipline is such and the circumstances are such that that kind of destruction is likely to follow occupation, so that it could be reasonably anticipated, I think that the rule would be modified.

Mr. CRUMPACKER. I want to suggest to your mind a limitation on that proposition of nonliability for wanton acts without authority of the commander. See how it strikes you. I have no doubt that in an army of occupation there may be wanton acts of destruction by soldiers in the way of pillaging, and so forth, for which there is no responsibility. But suppose private property be occupied at the order of the commanding general, and as a result of that occupancy and in connection therewith wanton acts of destruction are committed; it struck me that those were equivalent to acts of waste, and the occupant would be responsible.

Secretary TAFT. I think that is a fair statement. It is a question of what may be reasonably anticipated, it seems to me; and where it is due to lack of discipline——

Mr. CRUMPACKER. But, Mr. Secretary, if a man occupies the property of another and excludes the owner from it, does he not assume the obligation or function of protecting the property?

Secretary TAFT. Yes; that he would use reasonable care. He is not a guarantor, but he is required to use at least reasonable care.

Mr. CRUMPACKER. Now, I understand we occupied church property as military prisons, and confined therein Spanish soldiers, and possibly insurgents——

Secretary TAFT. Yes, sir——

Mr. CRUMPACKER. Spanish soldiers and possibly insurgents, who may not have been altogether friendly toward the religious organizations.

Secretary TAFT. The Spanish soldiers were.

Mr. CRUMPACKER. It might have been foreseen that there would be damage from that sort of occupation. Now, we destroyed one or two valuable pieces of property deliberately and intentionally as acts of war, to prevent those pieces of property from falling into the hands of the insurgents.

Secretary TAFT. I do not recollect any instances of that, but Colonel Hull may recall some.

Mr. CRUMPACKER. Colonel Hull stated one case the other day of considerable importance. He said that our troops destroyed, on our evacuation, property to the value of \$220,000, and that was for the purpose of preventing the property, on our retiring from that part of the country, from falling into the hands of the enemy.

Secretary TAFT. I remember the case of a building that was destroyed—the church of Guadeloupe.

Colonel HULL. That was the case I referred to. It was destroyed by General King.

Secretary TAFT. Was it not occupied by insurgents, and did we not fire on them with artillery?

Colonel HULL. It was destroyed by a company from California by fire.

Secretary TAFT. I thought they had used the place as a fortress, and that the American artillery set fire to it by bombardment.

Colonel HULL. They tried to, at one time, but failed.

Mr. CRUMPACKER. In cases of that kind I suppose there would be some question, under the law, as to the Government's being liable.

Secretary TAFT. I should think, Judge Crumpacker, that that would be properly in the train of war. It is so intimately connected with the train of war that it might be considered an unavoidable incident of war.

Mr. CRUMPACKER. Of course that was the intentional destruction of the property of noncombatants; not an accident or incident, but an intentional destruction. I think with you that perhaps under the law there is no liability, and yet it comes nearer to the class of injuries that may be called purely incidents of war.

Secretary TAFT. Suppose an army were retreating across a river on a bridge, and when the army got to the other side, in order to prevent successful pursuit, it burned the bridge. There is no doubt but that burning would be in the train of war, and I do not see any distinction between that case and the one you put with reference to the church building.

Mr. CRUMPACKER. Yes. That is in pursuance of the policy pursued by Sherman during his march to the sea during the civil war.

The CHAIRMAN. They might destroy a church to prevent its being used as headquarters of an insurgent force.

Mr. CRUMPACKER. The only legal claims against the Government, then, would be those for property used, for the use of conventos and churches used by our troops as headquarters and as military prisons, and the damages that were incident to such occupation?

Secretary TAFT. Yes, sir.

Mr. CRUMPACKER. The question about the payment for property destroyed to prevent its falling into the hands of the enemy addresses itself to the sense of magnanimity of our Government, rather than to its justice as a matter of legal liability.

Secretary TAFT. Rather than to the legal rights?

Mr. CRUMPACKER. Yes.

Secretary TAFT. I recommended, when it was here before, that this amount of \$363,000 might well be increased to \$500,000 or more on general principles of equity, and I have not changed my views on that

subject at all, especially in view of the last reports. I think that \$363,000 is much too low for rent and damages in occupation by our troops. It is much too low, because of the difficulty of bringing in evidence so long after the event. I think the board went through the matter with great care. But there are a great many claims filed in excess of the \$363,000 that, nearer to the event, might have been proven. The burden, of course, was on the claimants; but with the immense loss that the church suffered from war and other causes, I am quite sure that the increase of \$363,000 to half a million dollars or more will be no injustice. I am speaking now of the church claims, and not the friars' claims, which are a separate matter.

Mr. CRUMPACKER. Colonel Hull the other day gave a statement of the character of the investigation, and it seemed to be a very fair and thorough investigation. But in pursuing your order he said we occupied church property, conventos, and churches, and if there were wanton acts of destruction by our own troops while occupying them, the commission allowed nothing for them. It struck me that was not just. We were under obligations to protect the property against wantonness and acts of vandalism, and if acts of wanton waste were committed we would be responsible.

The CHAIRMAN. I do not understand that that is in the testimony.

Mr. MADISON. No. I understand the question was dealt with liberally, and that liberal consideration was given to it.

Mr. CRUMPACKER. Colonel Hull stated, as I understood him, that the commission allowed nothing for damages inflicted by our troops while occupying conventos and churches. I understood him to say—

Colonel HULL. That statement is correct, but in addition to that the board found, if you will recollect, that \$40,000 gold, in their opinion, would fully cover the wanton damages done by American troops.

Mr. CRUMPACKER. I see that is in your report, and that would be added to the \$363,000, if we assumed that we were liable for that class of injuries.

Colonel HULL. Yes.

Secretary TAFT. Mr. Chairman, I would like to go back a little bit in the statement, and—

The CHAIRMAN. Pardon me a moment. This is a point we can dispose of right here, and you can comment on it in your testimony. Here is what the board said, as referred to by Judge Crumpacker. It is on page 78 [reads]:

In all cases of claim made for loss of church property by fire it has been considered after due investigation that such claims come under one of three heads, viz:

(1) Destruction as an act of war, either by being fired by the insurgents on the approach of the American troops, to keep them from falling into their hands; by being fired by bombardment by American troops; or by being destroyed by either force to prevent the buildings being used as cover by the opposing force.

(2) As a case of wanton damage, as being maliciously fired, or

(3) As an accident.

In none of these cases mentioned can the question of damages be considered or a recommendation for payment be made without violating the precedents that have heretofore guided the Government in the settlement of claims.

That was what the judge-advocate, Colonel Hull, testified to.

Now, Mr. Secretary, will you please proceed?

Secretary TAFT. The first official reference to these claims I think you will find in the correspondence between Cardinal Rampolla and me with reference to the settlement of all the church controversies in the islands; or perhaps the first reference is in the letter of Secretary Root to me—a letter of instructions with reference to my visit to Rome.

The CHAIRMAN. That is when you were governor-general of the Philippines?

Secretary TAFT. Yes, sir. I stopped there on my way to the islands. That is found in Volume I, of the Report of the Secretary of War of 1902.

General EDWARDS. That is in Appendix O.

Secretary TAFT. Yes; Appendix O, on page 345. [Reads]:

Provision should be made for ascertaining what rentals, if any, ought to be paid for conventos and other church buildings which have been occupied by United States troops during the insurrection, this being of course subject to further specific action by Congress.

I had filed those letters of instruction with Cardinal Rampolla, and his answer was this [reads]:

The damages sustained by the Catholic Church in the Philippine Islands on account of the war constitute an object worthy of special attention in an amicable arrangement with the American authorities. Besides the acts of vandalism perpetrated by the insurgents in the destruction of churches and the appropriation of sacred vestments, there were occupied by the American Government episcopal palaces, seminaries, convents, rectories, and other buildings intended for worship, and these were also partly damaged. The Holy See learns with satisfaction that the American Government is not disinclined to indemnify according to justice the Catholic Church for such losses and damages; and this may be effected either by the restitution of buildings so occupied or by just compensation. On these matters the apostolic delegate will be instructed to come to an understanding with the American authorities and secure a just settlement.

In reply to that, in my response of July 3 to Cardinal Rampolla's communication, I said [reads]:

Fourth. The United States Government has occupied many churches, convents, and other buildings of the Roman Catholic Church and its orders in the islands for a year and sometimes for a longer period, and has as yet, it is understood, paid no rental therefor. It is proposed to ascertain the reasonable rentals and a certain class of damages, if any are proven, for the buildings thus occupied by means of a finding of the persons constituting the tribunal of arbitration already described.

I had proposed arbitration upon certain conditions. Then I continued [reads]:

The United States, it is understood, has never included and paid in compensation for such occupancy as this any damages, except for injury or alteration to the property authorized by the commanding officer of the occupying troops, either expressly or tacitly, nor is compensation ever allowed for injury done to buildings in the train of war.

It will perhaps turn out in some cases that the churches and conventos were in villages in which the whole population was engaged in insurrection against the United States, including the priest in charge, and in such a case it is proposed to leave open to the United States the defense that it was occupying only enemy's property during the time of war and was not liable therefore to pay compensation. Of course the validity of such defense must be submitted to the members of the tribunal. The Secretary of War, under whose general authority the buildings were occupied, has authorized me to agree to this method of ascertaining the amount due, but as there is no present authority in the laws of the

United States to submit the question for final arbitration, the Secretary can only agree to submit the ascertained result to Congress for its action. The money to be paid in these instances is not the money of the Philippine government, but the money of the United States, and it can only be drawn from the Treasury on the appropriation of Congress. There is no probability that Congress would refuse to provide the money to satisfy the conclusion thus fairly reached.

That is, by arbitration. That was one of four issues that I proposed we submit to arbitration, it being a condition that the friars should be withdrawn from the islands and should not be sent back to the parishes as parish priests.

Now, I am not as familiar with the recent evidence taken as doubtless some of the members of the committee are, and certainly not as familiar with it as Colonel Hull is, and I can only say generally, as I said before, that the condition of the Roman Catholic Church in the islands is deplorable, because of the destruction of these buildings and because of the absence of money with which to conduct the church. Under the concordat the Spanish Government paid the priests and paid most of the expenses of conducting the church, and furnished the buildings and the land. Now, by reason of the separation of church and state, due to the transfer of sovereignty, the money to administer the church has to come either from the outside or from the people; and it is a very difficult thing to go from one system, where the government supports the church, to the other, where the church is supported by voluntary contributions. The churches in the islands are very essential to our plans for making the people better and educating them and elevating their moral tone, and therefore the prosperity of all the churches in the islands is very important to the Government, and the Roman Catholic Church is the one that exists in every village in the islands. Therefore I always thought, in dealing with the church, that liberality toward it was liberality toward the Government and the people themselves; and liberality by Congress in recognizing the equity of these claims, and thus assisting the church, would be, it seems to me, in the interest of the people of the islands; not sectarian interest, but an interest in favor of morality, of loyalty to the Government, of peace and tranquillity in the islands.

A large amount was paid, not to the church, but to the representatives or grantees of the orders—the religious orders—in order to avoid an agrarian question that would have led to another insurrection. We paid upward of \$7,000,000 for something like 420,000 acres of land in the islands. That money went to the assignees of the friars. It was hoped that a good deal of it would remain in the islands for the aid and benefit of the church, and I am told that some part of it is to be devoted to the general church. Some part of it, too, has come back to the orders in the islands, and they have established schools, which of course are quite beneficial, and are aids to the public schools. They are now enlarging their school system and teaching English, and uniting with the Government in the effort to spread the English language through the islands. But the church as yet has received a very small part of this fund, as I am advised, and I think there is very great recalcitrancy—if I may say so—on the part of the orders with reference to letting the general church share in this large amount of money.

The price paid for the lands was a good round price. It was a price which I think we shall ultimately work out as the value of the

land increases; but the conditions on the islands now are such—due to the failure of Congress to let in sugar and tobacco into this country and to give us the benefit of these markets—that the sugar lands, which form a very considerable part of the friars' lands, are practically of no value at present. They will have to be developed subsequently. It is the rice lands that have marketable value now.

Mr. WASHBURN. You are speaking now of the lands bought of the friars?

Secretary TAFT. Yes.

Mr. WASHBURN. I heard the opinion expressed the other day that the price was greatly in excess of the value of the lands. Has the value of the land depreciated since it was bought?

Secretary TAFT. The land has depreciated, as the prospect of getting into the markets of the United States has disappeared. I am very hopeful that we may be able to arrange a compromise, either this year or the next, by which we can be allowed to import into this country something more than we ever imported from the islands before; and if we do, it will increase the value of the lands.

Mr. WASHBURN. Do you know whether it was recognized then that the valuation of the lands was excessive?

Secretary TAFT. The way we reached it was this: We employed our own surveyor, selected by the Philippine Commissioners, who was acquainted with the value of lands, and he went about and appraised the value on all the lands. Then we had a hearing, at which we heard the representatives of the friars. All of it is printed in the reports. Finally we settled on an increase of 25 per cent over his valuation.

Mr. WASHBURN. Why was that?

Secretary TAFT. We did that in order to get the lands at all. Congress had made a provision for their condemnation. The Dominican order had sold their lands to what is called the Philippine Sugar Company, and the Philippine Sugar Company had determined to go into a large exploitation, with the hope of the passage of the Philippine tariff act, and improve their lands, and they were determined not to sell. They employed Coudert Brothers, of New York, under a contract by the payment of \$50,000, by which the Coudert Brothers should contest the constitutionality of the law passed by Congress which authorized the condemnation of lands—on the ground that it was not for a public purpose; but only in order to avoid their being held by objectionable persons. They said that the power of eminent domain did not compel a transfer for that purpose, and therefore they resisted and fought the right of the Government. Inasmuch as that involved a lot of prospective litigation, and as the pressure upon us was very great for the removal of the difficulty—which I do not know that I have explained—we were willing to go beyond the estimate of the value of the lands for the sake of peace.

Mr. WASHBURN. There were some collateral considerations, then?

Secretary TAFT. Yes. These considerations I ought to state. The friars owned lands upon which there are upwards of 60,000 tenants in the Provinces of Cavite, Manila, Bulacan, and La Laguna, the four Tagalog provinces in which insurrection always begins and in which there is most likely to be disturbance. In the parliament or constitutional convention called at Malolos by the insurgent government, the first thing they did with regard to these lands was to nationalize

them; that is, they appropriated them to their government without any payment at all to the friars. That put the tenants in the position of saying that the friars had no title, but that the title was in the government, and therefore they refused to pay any rent at all. The minute the United States courts and justices of the peace, and so on, were established, as in a civil government, the friars were at liberty to go into court to recover, first, the rent, and if the tenancy was denied, then to go into court and recover the lands and eject the tenants; and that is what they proceeded to do. In every case we had a disturbance and in every case we had a riot, and with the prospect of 50,000 ejectment suits in that part of the islands where insurrection was liable to be rife anyway, if we did not remove that cause of trouble we would have a much more costly war on our hands than the cost of the purchase of the lands at a good round price would be.

Now, I was advised, when I was in the islands, that all the salable lands, that is, the rice lands, which were coming into the markets—I was advised that on those lands \$5,000,000 could be realized; that the sugar lands and the sugar plants had gone down in price for reasons I have already stated, and were unsalable, and out of them we must work out \$2,000,000—I mean of the \$7,000,000 that we have paid. We have had to go slowly, and make low rental leases in order to get all the tenants to attorn without controversy and litigation; but the process is a slow one. Still I have, myself, very great confidence that in the course of a decade we will work out the whole transaction in a way that will not produce any loss at all, or if it is a loss, it will be very slight, as compared with the benefits derived from the purchase of the lands.

Mr. GARRETT. Mr. Secretary, I have forgotten what the showing was, when the Philippine tariff bill was before the House two or three years ago. Are the markets more restricted to the Filipinos now than they were prior to our occupation?

Secretary TAFT. They are, but not through any transfer of sovereignty. There was a mistaken idea, due to a misunderstanding of the character of the tax imposed on sugar that went from the Philippines to Spain, that the Spanish market was open to the Philippine sugar. As a matter of fact, there was an internal tax on sugar which went to Spain which did not appear in the foreign customs law, that made the tax quite as heavy as it is in this country. My impression is that there has been a restriction in the sugar market available to the Philippine sugar in Japan, and perhaps in some other countries, and that the price of sugar has been lower than would make the cultivation of sugar in the Philippines profitable. There was a time when the total export of sugar from the Philippines was 265,000 tons. But that was the high-water mark. That is hardly more than half what is exported from the Hawaiian Islands to-day into this country. But I should be entirely willing—indeed, all the sugar interests in the islands are quite willing—to have a limitation, like 350,000 tons, placed on all the sugar exported from the islands into this country, in order to purchase from the sugar interests in this country their consent to such a bill for the reason that that amount would restore the former prosperity, and would give us in the provinces that are affected by this lack of a sugar market a condition that would be quite satisfactory to the people. On the other

hand, it would not lead to the exploitation of the islands for sugar as much as occurred in Cuba. I have never been in favor of making the Philippines a sugar country in the sense of absorbing with the sugar industry all the islands, for the reason that I have seen it work in Cuba, and I know it is not good for the islands. It is not good, first, that they should be dependent upon a market that is so affected by political considerations as the price of sugar is; I mean these agreements with reference to bounties in Europe, and the constant agitation which is going on with respect to sugar duties, which affects the price of sugar. Secondly, if we exploited the islands in sugar and were allowed such a market in the United States, and it were increased as it has increased in Cuba—although I do not think it would, even without any limitation—I think the limitation on labor is such that they could not increase as has been done in Cuba.

Nevertheless, assume that it is so; assume it, as it is done by the sugar interests in this country, that it would increase to 1,500,000 tons. We should have a capitalistic class there, a foreign class, who would own all the great sugar plantations, and a class of unskilled laborers, with no small farming or middle class between; a condition that would make it very difficult to build up a self-governing and conservative community. I would much prefer a division in the character of the agriculture there—what would you call it—

Mr. MADISON. A general diversification?

Secretary TAFT. Yes; I would much prefer a diversification of agriculture.

Mr. McKINLAY. Have you in mind what proportion of that 265,000 tons you speak of comes to the United States?

Secretary TAFT. I do not think that more than 100,000 tons of it came to the United States.

Mr. McKINLAY. Has not most of the exportation of sugar been confined to Japan and China, and is it not a fact that there is little that has come here to the United States under any circumstances?

Secretary TAFT. Yes, sir.

Mr. MADISON. Supposing we permitted 350,000 tons of Philippine sugar to come into this country free of duty. Then how much do you think we would get?

Secretary TAFT. I doubt if we would get more than a half or two-thirds of the crop. I think the demand would probably increase the price in China.

Mr. McKINLAY. Is not that the hope of those who advocate the admission of Philippine sugar into the United States free, that the increased demand for sugar in the markets of the United States would increase the price in Hongkong and Japan and China?

Secretary TAFT. Yes. It is the dependence of the people of the Philippine Islands on our sugar market that keeps the price so low at present.

Mr. MADISON. How much of the land in the Philippines can be devoted to raising sugar? I have heard different statements about that.

Secretary TAFT. I suppose that all but the rocks could be used to raise sugar. I mean that sugar would grow, but the question would be whether it could be grown profitably or not. As to that I can not tell you.

Mr. MADISON. That is what I mean.

Secretary TAFT. They have been making sugar there in the Philippines for centuries, and they have been using the land best adapted to it, and that is in Negros, Pampanga, Cavite, and La Laguna, and part of Manila; and if you look into the question of percentage of available land that is used in any country or any State for the growth of a particular product, you will find that it is a very small percentage of the area that might be available if all the land could be used. Now, in the hearings we had last year Mr. Wellborn, the superintendent of agriculture in the Philippine Islands, went into the percentage of land in Louisiana that was used for sugar. Now there is a great deal of land available there, but I think it was only about half of 1 per cent. Was it not, General Edwards?

General EDWARDS. Yes, sir.

Secretary TAFT. So that method of reaching what would be put into sugar, by calculating the area that could be put into sugar, is a very unjust one.

Mr. MADISON. Yes. Now, I represent a district that is very much interested in the raising of beet sugar, the southwestern district of Kansas. You understand that they are developing that industry there, and we are interested in it, and the statement has often been made to our people that as a matter of fact a very small portion of the land of these Philippine Islands, the tillable lands, could be used for the production of sugar at a profit. That is the reason I made the inquiry.

Secretary TAFT. That is true, but it is not due to the soil alone. It is due also to other conditions. For instance, the price of sugar is affected by the price of labor very materially. The price of labor in the islands has now increased to double the old wages, and in some cases to treble. The plantations in Negros are complaining all the time of the absence of laborers. They have to import their labor from other islands. The presence of the railroad constructors in Cebu, Negros, and Panay has still further increased the price of labor, so that the cost of labor to the Philippine planter has been materially increased. That, of course, necessarily limits the production. The labor is not good labor for the production of sugar—I mean it is labor that works only three or four days in the week, but it has been very cheap labor in the past.

Now with the increase in the price of labor it has become a heavy burden to the planter; and that, I think, is one of the reasons why the sugar industry has not thrived in the islands. I think it would thrive to some extent if we could get a market like the United States, where we could get in behind the tariff wall.

Mr. MADISON. There would not be any difficulty, would there, in finding lands there sufficient to produce the 350,000 tons, and a great deal more?

Secretary TAFT. There is no trouble about that.

Mr. MCKINLAY. The Chinese exclusion law applies to the Philippine Islands, and that prevents them from getting more labor of that kind?

Secretary TAFT. Yes.

Mr. MCKINLAY. As I remember, the sugar lands of the Philippines very rarely over 2 tons to the acre, and very seldom that; usually $1\frac{1}{2}$ tons?

Secretary TAFT. Yes.

Mr. MCKINLAY. And yet in the Hawaiian Islands they sometimes produce as much as 8 or 10 tons to the acre. Why is that?

Secretary TAFT. It is owing to the enormous capital invested in the Hawaiian Islands and the special care taken in the preparation of each acre. The irrigation and treatment of the land is enormously expensive.

Mr. MCKINLAY. Do you think if the Philippine lands were handled in the same way they would produce the same quantity of sugar?

Secretary TAFT. There is some soil in the Philippines that is as well adapted to the production of sugar as the land in the Hawaiian Islands, but most of it is not.

Mr. MCKINLAY. I understood from the statement of the man in charge of the experiment stations there that he could not produce, he said, more than $2\frac{1}{2}$ tons per acre with expert tillage of the soil, and then have only one ratoon crop afterwards.

Secretary TAFT. Yes. Of course they use in the Hawaiian Islands very expensive manure, or some chemical fertilizer that is very expensive.

Mr. MCKINLAY. I inferred from the testimony of that expert that even with the different methods used in Hawaii the production of sugar could not be the same in the Philippine Islands as in Hawaii.

Secretary TAFT. I doubt if it could, myself.

Mr. MADISON. As compared with Cuba, so far as the total product of Cuba is concerned, the Philippine Islands could produce much more sugar under proper tillage and proper incentive in the way of tariffs, could they not?

Secretary TAFT. I doubt it. There are enormous tracts of land in Cuba that are unoccupied.

Mr. WASHBURN. What is the cost of labor now in the Philippines as compared with the former cost?

Secretary TAFT. It has increased from 75 to 100 per cent.

Mr. WASHBURN. What is it to-day?

Secretary TAFT. Of course it varies in various parts of the islands.

Mr. WASHBURN. Speaking generally?

Secretary TAFT. My recollection is that they pay about 40 cents gold for a day laborer on railroads per day, and they are able with that labor to build roads at slightly less per labor cost than in this country.

Mr. WASHBURN. And you say that that labor is from 75 to 100 per cent higher than formerly?

Secretary TAFT. Yes, sir.

The CHAIRMAN. Mr. Secretary, rice is the principal product there now, is it not? There is more acreage in rice than anything else?

Secretary TAFT. Yes.

The CHAIRMAN. Rice is the staple food there, is it not?

Secretary TAFT. Yes; rice is the staple food. The great staple for export is hemp.

The CHAIRMAN. I was going to come to that, so that the question as to whether all the lands in the Philippines can raise sugar is not really a practical question, because there is land that can be put into hemp or into rice much more profitably. They must raise rice enough to support 7,000,000 or 8,000,000 of people. Recently they had to import some?

Secretary TAFT. Yes; I am sorry to say that in 1904 we had to pay between \$12,000,000 and \$15,000,000 gold for rice sufficient to feed the people. But that has now been reduced to \$3,500,000, and that is an evidence of the growing improvement in the islands and an evidence of the fact that the attention of the people has been called to the production of other agricultural products than sugar.

The CHAIRMAN. Mr. Secretary, the fact that although the Spaniards had been there for three or four hundred years, and with all that occupation by civilized people there were not, at the time we went there, more than one hundred and some odd thousand acres devoted to sugar, and five hundred and odd thousand acres devoted to rice, and not more than 200,000 acres at the most have been devoted to the production of sugar, shows that there is little likelihood that—

Secretary TAFT. You know those figures better than I do; yes.

Mr. MADISON. But is it not true that the Spanish administration was such as to discourage the people from the development of any of their agricultural resources?

Secretary TAFT. The trouble was that they did not place any burden upon the owners of the land. It was the common people who had to pay the taxes. A large amount of tax collected was what was called the "sedula" tax.

Mr. MADISON. I asked if the general style of government was not such as to oppress the general class of people. Now my idea is that we should, if possible, assist in the division of the lands of the islands among the people. If that policy had been followed by the Spanish Government, if they had encouraged small holdings, is it not reasonable to say that there would have been a great deal larger production of sugar?

Secretary TAFT. No, sir; I do not think so. Sugar is the one thing that needs more capital than anything else to produce it. You can not have small sugar farmers.

The CHAIRMAN. We want to settle these church claims, and this committee has nothing to do with the tariff.

Secretary TAFT. I am very glad to discuss it. I have been advocating as hard as I could—as some of the gentlemen here will concede—the free admission of sugar and tobacco into the markets of this country from the Philippines; not, as I have frequently said, to injure interests of the same character in this country, but because I am confident that such a procedure will not injure them. And so confident am I of that, that I am entirely willing to impose a limitation that will aid the islands and will not injure the interests here; for we have talked with the sugar men, and they admit that the admission of 350,000 tons from the Philippines into this country would not be a drop in the bucket, so far as they are concerned, and would not affect their interests, while on the other hand I contend that it will restore prosperity to the sugar interests in the islands, and then the islands can go on to a prosperity which I am sure is in store for them in hemp and other products which are not in competition with the interests of this country at all.

The CHAIRMAN. Copra is a valuable product, too?

Secretary TAFT. Yes. It is growing every year. I may say that copra and rice and hemp have the advantage over sugar, in that they do not need such an enormous capital to develop them, and in their

development they do not involve the separation of the community into a very rich and a very poor class, but they lead rather to small farms and to the development of an industrious, active, intelligent class of farmers.

Mr. MADISON. Now, may I just ask this question? I may say now that I am not captious about this matter. If the chairman thinks that he is mistaken. Neither are my people inclined to be unreasonable about this question. I am asking for information, and with no other motive in the world. Now, I want to ask you this question: Do you think that the conditions under the Spanish régime were satisfactory to the development of the sugar industry, or were they inclined to be otherwise, so that a comparison with the conditions under the Spanish Government and the conditions which we hope to inaugurate under the American Government would be a fair comparison?

Secretary TAFT. Well, I am very hopeful that, if you will give us markets here, we can develop the sugar industry beyond the point of its former prosperity. But the sugar interests of the islands were very prosperous in the old days, and I do not think the Spanish Government attempted to restrict it.

Mr. MADISON. Were the conditions favorable to its growth and development?

Secretary TAFT. No; not beyond a certain point, because they did not care to go into it. A Spaniard or Filipino planter got a certain amount of money, and he would be rich one season and then he would spend his money in jewelry and banquets and things of that kind, so that in another season he would get into debt, and there would be usury, and the next thing he knew his plantation would be tied up.

Mr. McKINLAY. Did not the Spanish tariff amount to more on the Philippine sugar than the American tariff?

Secretary TAFT. Yes, sir; practically.

Mr. MADISON. We can not say that it argues anything, because the sugar production attained only a certain point under the Spanish régime, that it will not attain a greater height under the American régime?

Secretary TAFT. I think it would. I am hopeful that it would. But of course you can not change human nature by law, and the same strain of human nature obtains there to-day that did obtain in the Spanish days, so that we can not look to such a development of the sugar industry in the islands as we could look for in Kansas, for instance, with respect to the development of this beet-sugar industry, which is growing to the point of reducing the cost of sugar far below what we would could afford to import it at from the Philippines.

Mr. McKINLAY. There is a great deal of fear that some day the Philippine Islands will be developed as extensively in sugar as the Hawaiian Islands or Cuba. Now is it not likely that there will be a larger development of rice than of sugar? Is there not more of a tendency to increase the production of copra and of rice and of hemp than to increase the production of sugar?

Secretary TAFT. Yes, sir; that is true. Understand me; my argument in favor of introducing sugar and tobacco into the markets of the United States, free, was based on the hope that it would not injure the interests of the United States, and that argument is based on this, that there comes over the tariff wall to-day sixteen hundred thousand tons of sugar, which pays either the full tariff, or 20 per cent less than

the full tariff, and that the sugar interests of this country could not be affected until there was raised in the Philippines sixteen hundred thousand tons to take the place of that quantity which now comes in, because so long as the sugar comes over the tariff wall, so long will it make the market price include the duty paid. I predict that we would not have got up to 1,500,000 tons of sugar in any event, and I did not care to see it go more than that. Then I was met with the proposition, "If you do not, why not impose a limitation?" I am ready to impose a limitation if Congress wants to put it on. That is the position I am in.

What I want to get is something that will develop those provinces in the islands where sugar has been produced for centuries, and where the depression in sugar production affects the whole condition of the islands. That is what I want to do. Not only that, but the sugar interests in the islands are entirely content with that. They are not fighting any other interests. The people of the islands, if they can get this concession, will be entirely satisfied. So likewise with respect to the tobacco interests. If we can effect a compromise, that would bring about a permanent settlement, and the limitation would prevent undue exploitation of the sugar industry. I frequently use the first person singular when I should use the plural, but you know we get interested in a controversy and overlook that point.

If there was only free trade here with the Philippines, your interests would not be particularly affected, and for this reason, that the minute you require a large amount of labor, as you do in the Hawaiian Islands, where they have been importing Chinamen and Japanese to such an extent—the minute you do that in the Philippines you increase the price of labor by leaps and bounds, and you can tell it by the price of labor with respect to hemp. Why, gentlemen, in certain parts of the season where the pulling of hemp is necessary to develop the hemp industry, the price of labor goes up to six or seven gold dollars a day in the Philippine Islands. Of course it is skilled labor, and a great many men are not able to do the hard labor required in the pulling of hemp properly; but I cite that to show that the Philippine Islands are not a community in which the demand for labor does not affect the price. If you exploit your sugar industry, you put the price of labor up, and when you put the price of labor up, its cost increases to a point where the production of sugar ceases to be profitable. I am very glad to have had this opportunity to discuss this subject here.

Mr. MADISON. I am very glad to have heard you, and I thank you for the information.

Mr. CRUMPACKER. You recommended, Mr. Secretary, when you were before the committee before, that we should appropriate a lump sum to the authorities and allow the distribution to be made through the agency of the church.

Secretary TAFT. Yes. My recollection is that I recommended to double the \$363,000. What I thought was, that in view of the circumstances there ought to be an equitable allowance in addition to the exact legal finding which was made.

Mr. CRUMPACKER. In view of the fact that they are our own people and under our political control, we ought to deal fairly, and a little

more than fairly, with them under the circumstances. It would be money well invested.

Secretary TAFT. Yes. I have been told that this price paid for the friars' lands ought to affect this question. That was a good round price, probably more than the lands would have sold for if they had been sold to a private individual. But the purchase by the Government, especially in my experience in Spanish-descended countries, is that the Government never gets land at the price which a private individual could buy it at.

The CHAIRMAN. It is \$17.50 an acre.

Secretary TAFT. There was a great deal of it that was not worth anything like that.

Mr. CRUMPACKER. The friars are not included in this \$363,000?

Secretary TAFT. No, sir.

Mr. CRUMPACKER. We are dealing now with the church claims exclusively?

Secretary TAFT. Yes. I did not feel anything like the same sense of equity with respect to the friars' claims as with respect to the church claims.

Mr. JONES. I want to ask if it is not true that we have never acquired, under that purchase or in any other way, any large part of the most valuable holdings of the friars?

Secretary TAFT. Oh, no.

Mr. JONES. Is it not true that a very large estate, the Mandeloian estate, stretching about 8 miles between Manila and Bulacan, worth some three or four million dollars, was not included in the purchase?

Secretary TAFT. There is an estate that was taken out of the purchase for the reason that the land had been sold to the railroad company for the purpose of construction, and therefore we consented that that should be left out. But that that is the most valuable part is untrue.

Mr. JONES. I have been informed about that recently by a gentleman who has been there for many years and has been familiar with the surveys of land, and he says these lands are actually worth three or four million dollars and stretch along for 7 or 8 miles.

Secretary TAFT. They were left out by the Augustinians, because they had already sold a part of those lands to the railroad, and on account of the fact that they did not present an agrarian question they were left out, in order to make the trade. Doubtless if we had included them we would have had to pay a larger sum. Then there were some exceptions made with respect to some sugar lands, because the Philippine sugar estates company wanted to do some sugar business. It was no easy matter, gentlemen, to get this matter through. The negotiations stretched over two years. The Dominicans, whose lands were most valuable, were determined to stand out. It was, as I say, only after a great deal of negotiation that we put it through.

Mr. JONES. I understood that perfectly, and yet I am convinced that we paid three or four times the proper price of land in Mindoro.

Secretary TAFT. There are 60,000 acres in Mindoro and 60,000 acres in Isabela, but they are so remote from Manila that it is difficult to dispose of land there, and we were trying to clean up. We had to pay more in some places than the land was worth, although we got land elsewhere that was worth more than we paid for it.

Mr. JONES. You have not sold any yet?

Secretary TAFT. No. We do not want to sell it yet. It is better to hold it and wait a little while.

Mr. HAMILTON. There were political questions to be settled that were far more important than the sale of those lands.

Secretary TAFT. The surveys have not been completed, but surveys of tracts for tenants have been begun, but they take a long time to be made.

Mr. JONES. I think the last of these lands was bought in October, 1905, and since that time until the 1st of July last our total receipts in the Philippine Islands in the way of rents, etc., were about ₱325,000.

Secretary TAFT. I think the amount is something more than that but I do not recollect exactly what it is. But whatever it is, it would not affect in the slightest degree my view of the situation, because You are dealing with a lot of lands that have been occupied by tenants without any rent. We purchased not only the lands, but the rentals of these lands since 1896 which have not been paid. They were transferred to the Government, and what we were buying was peace.

Mr. MCKINLAY. Has there been much objection on the part of the tenants to paying rent to the Government?

Secretary TAFT. No, sir.

Mr. MCKINLAY. You say they expected the lands to be nationalized if the insurrection was successful. Were these tenants to buy them from the Nationalists?

Secretary TAFT. Our taking them over seems to have satisfied them, and we were advised it would satisfy the tenants with reference to their willingness to attorn the Government.

Mr. MCKINLAY. They do not have a disposition to assert their own title to the land?

Secretary TAFT. There are some cases of that in Cebu, and some cases in La Laguna. We had to go slowly and diplomatically in dealing with all those people, because they are not very intelligent, and it is quite a sensitive subject with them.

The CHAIRMAN. Mr. Secretary, the aggregate of claims was approximately ₱4,000,000, and the award was \$363,000. In your judgment does that err on the side of extravagance as against the Government?

Secretary TAFT. No, sir; I do not think it does.

The CHAIRMAN. You think that is a perfectly just award?

Secretary TAFT. Yes. I was asked a while ago about how this ought to be paid.

The CHAIRMAN. Colonel Hull did attempt to indicate how payment should be made. Should it be made to some authority in the islands?

Secretary TAFT. I think the bishops of the various dioceses, including the Archbishop of Manila, have a legal right to give a binding receipt for compensation for damages of this sort, because under the canonical law, as I understand it, the title of all church property is properly in the bishop of the diocese, and therefore the archbishop could properly receipt for every parish in the islands. The real party in interest in each case is the parish having the church and the convento which was occupied or injured.

The CHAIRMAN. As to the title, what is your understanding of the decision of the supreme court of the islands?

Secretary TAFT. They have decided that the title is in the Roman Catholic Church, but the person who properly holds the title under the canonical law is the bishop. Therefore I think that the Government would be safe in accepting the receipt of the bishop.

Now I know from the correspondence that we have had that the church is very anxious to have the money paid, if it is paid, to a representative of the church, like possibly the apostolic delegate in the islands. If the bishops of the dioceses consent to that method of payment, and will give the receipts, then I think the Government will be entirely safe in paying it to the agent designated by the head of the church.

Mr. JONES. Mr. Secretary, would there be any objection to limiting the expenditure of this money to objects in the islands?

Secretary TAFT. No, sir. I wish certainly that would be the case.

Mr. JONES. I should fear if it were paid to the apostolic delegate it might be used outside of the islands; in Spain, for instance.

Secretary TAFT. If there were any danger of that, I should like some limitation made to prevent it.

Mr. HELM. Where would you have the right to control it if it is paid?

Secretary TAFT. You could only require a stipulation that it should be expended in the islands; an agreement by the person receiving it. That would be about all.

Mr. HAMILTON. If this were apportioned in a lump sum, and it were a liberal allowance, how would you apportion the payments among the various parishes?

Secretary TAFT. It would be very difficult for Congress to attempt to do that, and all that could be done would be to turn it over to the bishops for distribution, so far as possible, for losses sustained by the various churches.

Mr. HAMILTON. Then there might be a little margin over that for liberality, and in that case what would you do with that?

Secretary TAFT. You would have to leave that with the bishops to distribute. I want to say, with reference to the distribution of the money, that—

Mr. MADISON. From your knowledge, Mr. Secretary, of the character of the men who have had the distribution of the friars' funds, would you say it would be properly expended?

Secretary TAFT. There would not be a cent that would get out of the islands if it went to the hierarchy of the islands. The bishops are not the persons who have had to do with the distribution of this friars' land fund. They have not received the money which they expected to receive. Of course the Government in making this friars' land purchase could not impose a limitation as to what should be done with the money, although we did hope, from the statements made by Cardinal Rampolla, that the money would be applied to the religious needs of the islands. Here is what was stated by Cardinal Rampolla to me (reads):

This result will be all the more easy to attain since the resources of the religious will remain under the control of the supreme authority, to be devoted also to the spiritual needs of the church in the archipelago, besides which the representation of the Holy See, in accord with the diocesan authorities, will not permit the return of the Spanish religious of the above-named orders in the parishes where their presence would provoke troubles or disorders.

That is one of the unenforceable considerations not mentioned in the contract that led us to buy the lands, and another was an arrangement by which, if a parish priest is sent back to a place where a disturbance is likely to arise by reason of his being a Spanish friar, he is recalled at the instance of the governor-general.

That was another source of very great difficulty that we had to deal with. The church was without priests, except the Spanish friars, and there was very strong temptation, therefore, where people were without any religious instructor or priest at all, to send the Spanish friar back; and the sending of the Spanish friar back always created disturbances and always led to bitterness of feeling, charged against the Government, which, they continued to suppose, regulated what priest should be sent; and by reason of this friars' lands settlement, we were able to eliminate those Spanish friars from the parishes, substantially in all cases. There are some few friar parish priests left, but very few. By this time the church has been able to educate a number of native priests, and it has been bringing them out, so that ultimately the priests in the islands will all be natives.

The CHAIRMAN. What treasury paid for the friars' lands?

Secretary TAFT. The Philippine Islands treasury. The money was raised by bonds issued under authority of Congress, but by the Philippine government on bonds of the Philippine government, which the United States has not guaranteed.

Mr. MCKINLAY. In case Congress should add an equitable amount to this \$365,000, the amount of the award, is it not a fact that every parish has an ambition to rehabilitate its church and convents, and would naturally press the bishop to give them as much as possible of the amount in order to repair again the church in the community, and that would naturally cause an equitable distribution of the amount among the various parishes?

Secretary TAFT. Yes, sir.

Mr. MADISON. We might increase the allowance made by the board to a certain extent?

Secretary TAFT. Yes.

Mr. MCKINLAY. Would it not be better left to the bishops of the dioceses?

Secretary TAFT. I think so. You can be more certain that the money left to the bishops of the dioceses will go promptly to the interests you have in view.

Mr. WASHBURN. Have not the interests so changed that they would not want to rehabilitate the churches where they were?

Secretary TAFT. Generally the churches were built so solidly that they would rehabilitate them where they stand. Generally they are built according to the Spanish architecture, with thick walls, and the bases of a new building would be found in what remains of the old buildings. So much of the old buildings would be left that it would be more economical to repair them than to build new buildings.

Mr. WASHBURN. The conditions have not so changed as to render the entire reconstruction of these buildings in other places necessary?

Secretary TAFT. No, sir.

Mr. DAVIS. Is it feasible to pay this money to the respective bishops of each diocese?

Secretary TAFT. It could be.

Mr. DAVIS. Would it not have to be secured in some way?

Secretary TAFT. That is suggested on the report of the committee, is it not?

Mr. DAVIS. I understood from Colonel Hull that it was to be given to one individual—the papal delegate, and—

Secretary TAFT. I have no doubt that the money would be distributed perhaps with more usefulness if it were left with the Archbishop of Manila or the apostolic delegate there. But I was speaking particularly of a legal method of procuring release from the legal obligation against the Government. You might make a payment to one person on condition that he presented a release from the bishops of the dioceses.

Mr. DAVIS. This question suggested itself to me in consequence of the idea of trying to retain, if possible, these funds in the islands. If given to the respective bishops, do you think it would be more likely to be retained in the dioceses than if it were given to one delegate at large?

Secretary TAFT. I do not think there will be any danger that the money will not remain in the islands. It is needed so badly that it will stay there.

Mr. MADISON. I understood Colonel Hull to say in effect that the people already had written authority to represent the different dioceses, and that he can settle up this entire matter and give the Government a receipt, and all responsibility on the part of the Government would end right there.

Colonel HULL. There was a representative of the bishops before the board, and I said he could get a legal quittance from the bishops and file a receipt.

Mr. CRUMPACKER. The archbishop is an American?

Secretary TAFT. Yes. All the bishops are Americans except one, and he is a Filipino.

Mr. CRUMPACKER. There would be no likelihood of using that money anywhere else than on the islands if the money were paid to the bishops, and the receipt of the bishop of each district would be a sufficient release?

Secretary TAFT. Yes.

The CHAIRMAN. Would there be any difficulty in having a provision in this bill to the effect that the money should be paid to the Archbishop of Manila for distribution to the provinces upon his presenting a receipt or authorization from each of the bishops?

Secretary TAFT. No, sir. I believe he does not care for the responsibility.

Colonel HULL. I know there is liable to be trouble over that, from the fact that the archbishop has no control or authority over the financial arrangements of the other bishops, and if there is given anything in the way of a gratuity it would be a question as to whether they would get an equitable portion of it.

Secretary TAFT. I think the church authorities generally would much prefer to have it given to one man, in order that its distribution should be made equitable, with a view to circumstances that it is hardly possible to make clear to the committee or to Congress.

Mr. CRUMPACKER. If he turned it over to the archbishop he would distribute it through the agent of the church there?

Secretary TAFT. Yes. I think if you appropriate the money it will not make much difference how you fix it——

Colonel HULL. Except that the Archbishop of Manila is one of the interested claimants.

Mr. PARSONS. Then the Archbishop of Manila does not in a financial way represent the head of the church there?

Secretary TAFT. He is head of the province. He calls conferences, and he——

The CHAIRMAN. He could take charge of this money if Congress should so direct by law?

Secretary TAFT. Yes; he could.

The CHAIRMAN. Mr. Secretary, do you think of anything additional that would be pertinent here?

Secretary TAFT. I do not think so. There is a great deal about this matter in the reports of the Secretary of War.

The CHAIRMAN. If we should want to call you again this week——

Secretary TAFT. I am at your disposal.

The CHAIRMAN. Thank you.

COMMITTEE ON INSULAR AFFAIRS,
House of Representatives, January 21, 1908.

The committee met at 10.30 a. m., Hon. Henry Allen Cooper, chairman, presiding.

The CHAIRMAN. We will this morning take up again the question of the Catholic Church claims in the Philippine Islands.

STATEMENT OF MAJ. JOHN BIDDLE PORTER, U. S. ARMY, ASSISTANT TO THE JUDGE-ADVOCATE-GENERAL, U. S. ARMY.

The CHAIRMAN. Major, will you please give your name and rank?

Major PORTER. Maj. J. B. Porter, judge-advocate, U. S. Army.

The CHAIRMAN. Have you been in the Philippines?

Major PORTER. Yes, sir.

The CHAIRMAN. When?

Major PORTER. I was there from the fall of 1899 until the beginning of 1902.

The CHAIRMAN. In what capacity?

Major PORTER. I went out there as an officer of infantry with my battalion, later was on staff duty in Manila, and finally was appointed a judge-advocate and remained in Manila on the staff, although not doing judge-advocate's work.

The CHAIRMAN. During those three years you became pretty thoroughly acquainted with conditions in the Philippine Islands, did you not?

Major PORTER. Yes, sir. For a good many months I was on a board of claims taking under consideration civil claims, and later I became assistant to the secretary to the military governor, who was the officer having entire charge of civil affairs under the military government. I remained in Manila under General Chaffee, in charge of civil affairs for that portion of the islands that were not immediately turned over on the 4th of July, 1901, to civil control.

The CHAIRMAN. While serving in that capacity, was your attention called to the Catholic Church claims in the Philippine Islands?

Major PORTER. Yes, sir. They were a source of constant discussion. They were constantly coming up, in one form or another, for consideration.

The CHAIRMAN. What was the character of the claims brought to your attention?

Major PORTER. They were extremely varied. Of course from the time that we took over the government of the Philippines the Catholic Church sought to straighten out its position. That was the beginning, and we had all sorts of claims put in then, while various authorities of the church would call upon us to do quite impossible things under our system of government, which they did not always seem to understand. These were largely efforts to cause us to do things in the way of restoring to them various properties, and so on, and so on. Later came up the question of rentals and damage done to their churches in one form or another, either by our own army or by the insurgents. It would be hard to say what was not suggested in those early days to the military governor and his officers along those lines.

The CHAIRMAN. Do you know of any church property—conventos, etc.—being occupied by our troops or by prisoners?

Major PORTER. Yes, sir. However, of the occupancy by Spanish prisoners I know only by reports and from having gone over the papers. When the army entered the city of Manila, on the 14th of August—

The CHAIRMAN. Of what year?

Major PORTER (continuing). Eighteen hundred and ninety-eight. It became necessary to house the surrendered Spanish garrison. We took over the barracks for our own troops, and it therefore became necessary to house the Spanish garrison elsewhere. This was done by putting them in the convents in the city of Manila. I do not mean by the term "convent" the parish house, as we constantly use the term. Those were the actual convents of the four orders in Manila, and the latter at once began asking for—

The CHAIRMAN. Can you give the names of those four orders?

Major PORTER. The Dominicans, the Franciscans, the Augustinians, and the Recoletos. The Jesuits have never during all the time that we have been in the islands appeared as one of the orders in the sense in which the others have. They have remained quiet, and at no time when we speak of the orders have we included or contemplated the Jesuits.

The CHAIRMAN. Do they own property there—the Jesuits?

Major PORTER. I fancy they do, sir.

The CHAIRMAN. Do you know anything as to that yourself?

Major PORTER. I know nothing except as shown by the church claims. There are certain claims which the Jesuits filed through the church proper.

The CHAIRMAN. When you speak of "orders," in referring to these convents, you mean the friars?

Major PORTER. I mean the friars.

The CHAIRMAN. The four orders of friars who occupied these buildings?

Major PORTER. I speak of these buildings in contradistinction to the church property which was owned by the church proper.

In the country where there was a garrison established or a temporary sojourn made we depended mainly for quarters on the churches and the parish buildings, which are usually called "conventos."

The CHAIRMAN. Those are distinguished from the friar properties?

Major PORTER. Yes, sir.

The CHAIRMAN. What do you know of the occupancy of that particular property—the church property proper—by our troops or prisoners?

Major PORTER. Speaking from my own personal knowledge, I occupied a part of the church at Bacoar. Our troops occupied the church as a storehouse, for quarters, and as a guardhouse, and the convento as a hospital.

The CHAIRMAN. For how long?

Major PORTER. Well, I relieved the Fourteenth Infantry there, and I was there with my battalion a good many weeks, and I know that my successors continued to occupy it. I suppose that the total occupation must have been about two or three years. However, I am not prepared to say positively as to that. I am speaking only of general possession.

The CHAIRMAN. That occupation was, I suppose, to the entire exclusion of the church?

Major PORTER. Yes, sir. At Dasmarinas, where we were stationed for some time, the altar and adjacent parts of the church were used by the commissary as a commissary storehouse, and the commissary himself slept on the steps of the altar. The middle of the church was used for general storage purposes and the front for a guardhouse. The roof was used for a lookout and the sacristy for a commissary sales depot. It was the only available house in the place. At Silang—these places are all in Cavite Province—I had occasion to go there frequently—I am giving you my personal observation—other regiments used the convento, although the church was still used for sacred purposes. The parish buildings and everything else adjacent thereto were used for quarters and storage.

The CHAIRMAN. When you refer to the convento in this instance, you mean the priest's house.

Major PORTER. Wherever I say "convento" I mean the parish, or priest's house. When another battalion of my regiment went to Taal, they did not occupy the church because they did not need it, but they used the convento. The church itself was barren, the insurgents having taken away the sacred images, ornaments, and everything of any value. We used the tower for a sentry lookout, but virtually the whole church property was in our possession for occupancy for months. The same was the case at Las Pinas, where some of my regiment was stationed. Of course there was a certain resultant damage, for, I regret to say, the average American man is rather a breaking animal. The Spanish troops while confined as prisoners in those convents in Manila—the convents of the friars—appear to have committed a large amount of wanton damage. They tore up music books, they scratched and broke the organs, and otherwise ruined considerable property.

The CHAIRMAN. The Spanish soldiers did that?

Major PORTER. Our prisoners did it. I suppose we were responsible to the landlord when we took over the houses; I remember speaking to some of the friars who came to complain, and said, "Aren't they good Catholics?" They replied, "Yes, but they are soldiers;" as much to say when you become a soldier you lose all respect for everything. That seemed to be their point of view.

The occupancy of the conventos was general throughout the islands. For instance, I was sent to Tayabas. There I observed that the church property was used. Services were still conducted there, as the church proper did not have to be occupied, but all the buildings attached to it were used for military purposes—either as offices, as a storehouse, or as quarters. I observed the same in many other places.

The CHAIRMAN. Speaking generally, in the various pueblos they were the only buildings which were available.

Major PORTER. Virtually so; yes. A good many of them, of course, were susceptible of defense, which was another point which had to be considered in the days of hostility. A village made up of nipa shacks might have afforded shelter from the weather, but, as we have seen at Balangiga, where a company of the Ninth Infantry was massacred, the occupation of segregated small huts in a hostile country is a dangerous practice.

Mr. FORNES. In occupying those churches and conventos, you removed pretty nearly almost all the furniture, did you not, such as the pews, etc.?

Major PORTER. There were no pews. They have no pews in those churches; they have confessional boxes and sacred images and ornaments. Beyond these there is virtually no furniture in the churches. When we found furniture in the conventos, we were only too glad to use it.

Mr. FORNES. During the occupancy I presume you used the walls for the hanging of uniforms and such things, which meant the driving of nails?

Major PORTER. The troops drove nails and tore down partitions, and did all sorts of things to adapt the premises to their new use. They made themselves absolutely at home. Sometimes the same men occupied these buildings for six months or a year at a time.

Mr. FORNES. And in arriving at the estimate of the claims, was the restoration of the buildings taken into consideration?

Major PORTER. That I do not know, sir. I was not on the board. I presume the restoration of the buildings was taken into consideration. As assistant to the Judge-Advocate-General here in Washington, with the knowledge I had generally of the situation—I went over the report of the board in Manila, and the review of the Judge-Advocate-General was to the effect that the recommended award seemed very moderate, considering what we knew in a general, off-hand way of the use of the buildings and the damage done to them.

The CHAIRMAN. You are now stationed in the office of the Judge-Advocate-General in this city?

Major PORTER. I am assistant to the Judge-Advocate-General.

The CHAIRMAN. And you have gone over the matter of the record of these claims pretty thoroughly.

Major PORTER. Yes, sir.

The CHAIRMAN. From your study of the record, and from your knowledge of conditions as you found them from personal observation and otherwise, what do you think as to the merits of the award of the board?

Major PORTER. I think the award is extremely conservative, Mr. Chairman; that is my opinion of it. I have no interest in it, one way or another, but the impression made on my mind, from what I have seen in the Philippines during the two years and a half that I was in the islands, is that the estimates were very moderate, particularly considering the difficulty of replacing the property destroyed.

The CHAIRMAN. There is one question of law I would like to ask you at this point. Suppose, during the occupancy by our soldiers of the priest's house or convento, there was wanton destruction of the property by fire, what would you say as to the liability of this Government?

Major PORTER. What do you mean by wanton destruction?

The CHAIRMAN. Suppose a soldier was drunk, and as a matter of deliberate malice outside of orders from his superior officers, and outside of military necessity, but merely as a matter of pure, wanton mischief, destroyed church property.

Major PORTER. It would come within the rule that the Government is not responsible for the tortious acts of its servants.

The CHAIRMAN. That is true.

Major PORTER. Generally speaking, of course, there is an equitable duty, you might say, on the part of the Government to straighten out wrongs that are done by its servants in that way.

The CHAIRMAN. I observe that the Board, in reporting upon claims of that kind, say that they were all excluded from the award.

Major PORTER. We have got to do that. Congress may do things that we can not do. If we are called upon to report on the question of compensation to an individual for the tortious act of a soldier, we have got to say, "We can not pay you." Congress is under no such limitation, but we are. As a part of the executive, if the question comes up to us we have got to say that it is a well-settled point of law that the Government is not responsible for tortious acts of its agents.

The CHAIRMAN. Of course, technically speaking, I suppose you would say that in this case the Government of the United States was the tenant and the soldier was the servant. That is the idea.

Major PORTER. That is the idea.

The CHAIRMAN. The soldier not being the occupant, but the Government being the occupant, and the soldier the servant.

Major PORTER. The soldier is the agent.

The CHAIRMAN. I should say the agent; but of course the Government is made up of individuals, so to speak; it is not a physical corporeal entity. What would you think of the justice of the allowance of a claim where soldiers under the command of officers were occupying a church or convento, and they deliberately set the building on fire, of our paying for it?

Major PORTER. I should say that justice required that our Government should compensate the owner; but if the question should come before me as a point of law based on former decisions, I would say that it could not be done by any executive agency.

The CHAIRMAN. That is the attitude of the Judge-Advocate-General throughout.

Major PORTER. Yes; we have had to take that action; we have no latitude. We are not like Congress; we can only follow what the decisions have held to be the law.

The CHAIRMAN. Major Porter, are there any other instances of destruction of property in the Islands that you now think of importance to the committee to hear about?

Mr. CRUMPACKER. Before we leave this point I would like to ask the Major a question. While it is the law that the Government is not responsible for the unauthorized and the wanton or tortious acts of its agents, yet where the Government takes possession of property for its own use and puts its soldiers and agents in the property, they appear to lose sight altogether of the obligation the Government assumes to protect the property against the wanton acts of its own agents. The obligation of the Government when it takes possession of the property is that of a tenant who is bound to protect the property against the wrongful acts of his own occupants. Now, do you recognize any distinction between the wanton acts perpetrated by men who are in possession of property occupied by the Government, and casual wanton acts of destruction and violence that happen in the course of warfare or on the outside? Do you recognize any difference between that class of acts?

Major PORTER. If the question be merely one of landlord and tenant, why then, of course, we do not recognize the individual act by which the damage was done, but if a claim be made, as it frequently has been, resulting from the act of some particular soldier who is not in control, we have to fall back on the principle of which I have spoken. If they say, "You took over this building in perfect repair, and you should return it in the same condition in which you got it," that is different. That is a case in which under ordinary circumstances we would say the ordinary rules applicable to landlords and tenants apply.

Mr. CRUMPACKER. And the Government then would compensate for the injury to the property, without any regard to how that injury occurred, of course, provided such injury occurred through its own agents.

Major PORTER. Yes, in a general way it would, and that could be met under ordinary circumstances by the current appropriations for barracks and quarters.

Mr. CRUMPACKER. And that grows out of the responsibility. It is not based upon the damages perpetrated by the wanton acts of the soldiers, but out of the responsibility that the Government assumes in taking possession of the property, to take care of it and protect it against waste and destruction.

Major PORTER. Yes, there is an implied contract to restore the building in the condition in which it was taken, with ordinary wear and tear excepted.

Mr. CRUMPACKER. That is the civil law.

Major PORTER. The reason I spoke as I did is that we have had a great many claims filed, for instance, for the burning of a shack by two or three soldiers who went in there to sleep and set fire to it by endeavoring to cook in a nipa hut according to the American fashion. They might as well have tried to do it in a powder factory. In

cases of that kind we have had to say that these men were not authorized to do what they did.

In other cases where, for example, the Government has leased some of the best houses in Manila, the situation has always been that of landlord and tenant. We are usually responsible for damage beyond the ordinary wear and tear.

The CHAIRMAN. Does that liability go to the extent of guarantor, or to the exercise of reasonable care?

Major PORTER. Reasonable care, sir.

The CHAIRMAN. It is your idea, as I infer from what you say in reply to Judge Crumpacker and in reply to my own questions, that if the Government were to allow for damages for the destruction of property, even though wanton, where we were in possession, as in the instances which you have specified, that it would be only just.

Major PORTER. That is my opinion, yes, sir. That is what I have gathered. This question has been present with me for a number of years; for, while all of these church claims have been set aside until things were more generally settled, we were able to meet many other claims as they were presented. When the church claims first came up, we said "This is not the time." We had not then looked into the question of our liability sufficiently in the matter of titles and desired to be guided by the civil courts on those points. I became very familiar, however, with these claims from June, 1900, when I went up to Manila on special duty and had charge of them.

The CHAIRMAN. To repeat what you have said, I understand your statement to be that the award of \$363,000 is very conservative.

Major PORTER. Very conservative.

Mr. DAVIS. I am not exactly clear on this question of liability, which Judge Crumpacker brought up, and I have been trying to find some case that would make it clearer perhaps. Suppose that from necessity arising from the state of war our army was on retreat, and in so doing had, as it were, a necessity to occupy one of these conventos or church buildings, and the necessities of life, as you might say, that they break down, tear up an altar or any furniture that happened to be therein for their own defense or purpose, not authorized by any officer, but the soldiers considered that they should use this—perhaps unnecessarily so—but in their judgment they used it, would this be a claim that the Government should pay? When it directly appeared to the board subsequently that this was absolutely unnecessary, although the soldiers at that time thought it necessary, but it proved to be wanton damage, what would you do with a claim of that kind?

Major PORTER. Well, it would be very hard to say. If the damages were done in the train of war it seems well settled that no payment for damages is due.

Mr. DAVIS. I understand that general principle.

Major PORTER. I think the case you mention would be a case for the evidence. If you could show that these men, even under the circumstances of a retreat, were reckless and did unnecessary damage, the remedy would lie against the individuals if they could be found.

Mr. WASHBURN. But not against the Government.

Major PORTER. Not against the Government. I think not.

Mr. DAVIS. That is what I wanted to ascertain. That would be a case of recklessness of the troops, or supreme contempt for the church

and its buildings, and if an officer were present without, perhaps, having attempted to prevent the acts—for soldiers are soldiers under certain conditions—and they would say, “Why, perhaps they were Protestants, and they did not care anything about the Catholic faith, and would just as soon burn the images and ornaments”——

Colonel HULL. I hardly think that there was a case of that kind in the whole archipelago.

Mr. DAVIS. I was trying to decide this point of Judge Crumpacker’s; trying to draw out the distinction——

Mr. CRUMPACKER. My question is predicated upon the theory that in all these cases the Government by its officers took possession of the property and excluded the owner, and therefore assumed the responsibility of landlord, put those soldiers in and by its own soldiers occupied it as a tenant. If the Government’s own soldiers perpetrated acts of damage, whether wanton or otherwise, the tenant is bound to be responsible for regulating the acts of the soldiers. It is like a family who rent a house, and if the children do damage the tenant is responsible.

Mr. DAVIS. I understand that your position is this, that if the Government of the United States, by and through its officers went to the owner of a church—the friars or whomsoever it might be—and said, “We want to occupy this church for quarters, for living purposes,” the parties are simply in the position of landlord and tenant.

Mr. CRUMPACKER. Suppose they take possession without permission.

Mr. DAVIS. Any damage then that was done where the Government is in the position of a tenant and where it deliberately went in for that particular purpose, then it ought to pay the damages, at least where all reasonable care could have prevented it.

Mr. CRUMPACKER. Let me ask you——

Mr. DAVIS. (Continuing.) But, where in retreating hastily they come to the property without the knowledge of the owner, and in the train, partially, of war, you might say, and occupy it, then if the servants (the soldiers of the Government) committed wrong under any misapprehension of fact or otherwise, there seems to be a difference between the two cases.

Mr. CRUMPACKER. There is this difference I think. In the first place, there is no such case as you have stated, I understand, before the committee for its consideration.

Mr. DAVIS. Because the American troops never retreated.

Mr. CRUMPACKER. No, there is no such question for consideration. Your statement suggests the notion that a man who is a right doer, in the first place who gets consent is bound to do some things, but if he is a wrongdoer, he is relieved from any responsibility. My notion is—and I think it is true—that the Government obtained no consent of the proprietor or custodian, but as a mere matter of military necessity took possession of the property that was convenient, the only property that was of the kind they needed.

The CHAIRMAN. Noncombatants.

Mr. CRUMPACKER. Yes. Took possession. I say that they are subject to some degree of responsibility. I do not say that the occupation of the buildings by our soldiers under any circumstances was

wrongful. I say that the occupancy of the church property may be of two kinds: First, by consent of the owner and by agreement; and next from apparent necessity owing to the business they are then engaged in, either advancing or retreating, which partakes to a certain extent of the train of war.

Mr. GRAHAM. I supposed that all the occupancy was without the consent of the owners.

Major PORTER. Almost entirely. There were no terms or agreements.

Mr. CRUMPACKER. They just took possession of it.

Colonel HULL. In ninety-nine cases out of one hundred that is correct.

Mr. DAVIS. Are not there some cases in which they spoke to the authorities and said that they would like to occupy the property?

The CHAIRMAN. That would come under the head of "contracts."

Mr. FORNES. The Government requires protection for its soldiers. Those buildings, as it has been stated, were used not only for the housing of the soldiers, but also for fortress purposes, as I understand it.

Mr. GRAHAM. And prisons.

Mr. FORNES. Let us look at the justice of it. If we had not used some of these buildings, we would have had to build forts or else take the chance of losing a great many more soldiers. The lives of soldiers are, of course, very valuable. No estimate can be placed upon them. This property was there, and the Government saw fit to make use of it. Now, any technical point of law, whether they were landlord or tenant, then the relation was there still. The Government took advantage of this property in order to maintain, or to take advantage of it they destroyed a certain share of it. Now, as it is properly stated here, the allowance is very conservative. At this point I want to ask a question for my own information, being the first time I have had the honor of attending one of the meetings of this committee—I am a new Member also. Are these claims assumed to cover all damages to the property, or are there other claims pending against the Government by the church?

Major PORTER. No; there are no other claims.

Mr. FORNES. This is the final judgment for the use of all the church property?

Major PORTER. There may be individual claims for various things, but the only ones that are before this committee are for the use of the premises and the resultant damages thereto.

The CHAIRMAN. Major, do you think of anything else that you desire to submit to the committee?

Major PORTER. No, sir; except that point which was raised a few moments ago. I venture to say that during the first year or two, no church property whatever was entered into by the consent—that is, outside of Manila—with the consent of the landlord, if we call the church the landlord. We went there, and we found that property and we used it. Later, when things settled down and it became necessary to occupy private buildings, a quartermaster would lease them just as we would here in Washington if we had to occupy similar property.

Mr. FORNES. As I understand you to say, not only for the housing of soldiers, but also for defensive purposes?

Major PORTER. Defense, storage, and everything. You must remember that a great point also was to get a roof over our men.

Mr. DAVIS. In any country where the citizens are engaged in war they must expect damages to their property by the enemy.

Major PORTER. We never looked upon the Filipinos as enemies.

Mr. DAVIS. Well, they lived in a country where a contest was going on. The inhabitants ought to stand some of the injuries of war because they live in a country where war is going on.

Major PORTER. Our theory was that we ought not to consider the Filipinos at large as inimical to the United States. There were certain misguided men among them, but we never looked on the country at large as though in a state of rebellion, although a state of war existed.

Mr. DAVIS. They were like Old Dog Tray—in involuntary company. [Laughter.]

Mr. FORNES. This property which you occupied was never used as against the Government of the United States in any way. What I mean by that is, to shelter the enemies of the United States, or in any way to protect them by saying: "We will give you the benefit of this property."

Major PORTER. In a good many of the churches the insurgents had prepared to defend their position. I do not know of any case where they actually did it.

Mr. FORNES. Take forcible possession of the property?

Major PORTER. They would take forcible possession if they could and say, "We are going to hold this as a stronghold," but I know of no instance in which there was an actual fight at the church.

Colonel HULL. They fired upon us from that church [indicating photograph Pateros].

Mr. MADISON. There was no instance where the church gave over property voluntarily for the use of the enemy. That is what Mr. Fornes was getting at.

Major PORTER. No, no.

The CHAIRMAN. Now, Major, do you know of anything else in reference to these claims of importance to the committee to know?

Major PORTER. Nothing except to say that we looked upon all these properties as being occupied under a constructive contract. No regular contract was possible. The enemy had taken to the woods—if we call them an enemy—some of the priests had been murdered and some had been chased into Manila. I know of no case where it was possible to enter into any formal agreement to occupy these churches or properties.

The CHAIRMAN. Have you anything further that you care to say to the committee?

Major PORTER. No, sir.

Mr. HELM. There is a question I would like to ask the major, if I may be permitted. If the Government is responsible for the willful and malicious acts of one of its soldiers in destroying property, on the same theory would it not be responsible for the willful and malicious acts or murder of an individual? For instance, if the soldiers were to murder—

Major PORTER. The Government is not responsible for the tortious acts.

Mr. HELM. That is what I understood Judge Crumpacker to say.

Major PORTER. If you had a family of seven children and took a house, you would be responsible to the landlord for any damage that the seven children might do. In the same way, if the Government takes a building and use it in a normal way, it is responsible for it. In this case the Government is the tenant and is responsible to the landlord. If a man goes down the street and sets fire to another man's house, although a soldier of the United States, the United States is not responsible for his act.

Mr. HELM. That is the way I understand it.

The CHAIRMAN. The general rule is that the tenant agrees to return the property in as good condition as he receives it, ordinary wear and tear excepted—that is the rule of landlord and tenant.

(To Major Porter.) We thank you very much, Major Porter. That is all this morning. Now, Colonel Hull, we will be pleased to hear you. It may be well for Mr. Fornes to know that Colonel Hull is judge-advocate of the Regular Army, Department of the East, and that he was the president of this board that considered these claims.

Mr. FORNES. Of this Commission.

The CHAIRMAN. Of this Commission.

Mr. CRUMPACKER. He testified the first day.

The CHAIRMAN. Yes; Colonel Hull testified the first day. We are having his testimony printed and you will have a copy of it very soon.

STATEMENT OF LIEUT. COL. JOHN A. HULL—Continued.

The CHAIRMAN. Now, Colonel Hull, I want to ask some questions based on this printed statement that you handed me. I find that the gross award of the board under the report of November 15, 1906, and the report of March 5, 1907, is \$363,430.19. Is that correct?

Colonel HULL. Yes, sir.

The CHAIRMAN. You say that under the supplementary instructions of July 16, 1906, the board estimated the damage to the church property by war at \$618,540, and by the insurgents at \$834,374, making a total of \$1,452,914.

Colonel HULL. I would like to add one thing right there. This estimate was from the claims presented by the church. I have no doubt but what there are a number of other small claims not presented by the church which would increase the total damage suffered by the church.

The CHAIRMAN. Right at that point I have a question to ask. The church also claimed for loot of articles of cult and ornamentation \$298,222.50—approximately \$300,000. You say that the board, in its report of December 31, 1906, declined, on account of lack of information, to estimate the money value. Is that true?

Colonel HULL. Yes, sir.

The CHAIRMAN. On page 39 of the printed report of January 15, 1906, they do, however, find that \$40,000 would cover such loss; that is, the loss of articles of cult, images, vestments, etc., caused by the American army. The other damage was, I suppose, by the insurgents.

Colonel HULL. The insurgents, Filipinos themselves, Chinese, and other evil-disposed persons.

The CHAIRMAN. You add in this statement that this item was not favorably considered by the Judge-Advocate-General, as the allowance of the same would establish a bad precedent. Then you say that the church also presented claims for moneys and supplies seized by the insurgents and used by them in the prosecution of the war, cash \$57,603.50 and supplies \$8,500, making a total of \$66,103.50. Why were not those claims investigated?

Colonel HULL. Because we did not consider that any nation would consider the matter of the reimbursement of money and supplies turned over to the enemy to continue war against that nation, and then when the war had been successfully terminated say that the successful country should reimburse the other fellows. We therefore made no investigation of these claims, but simply reported them. It was impossible to make such an investigation. While I have no doubt that some of the money was seized, some of it was voluntarily turned over by priests hostile to us.

The CHAIRMAN. Now, Colonel, I have here a statement made by Right Rev. Frederick Z. Rooker, bishop of Jaro. Was he duly sworn as a witness by your board?

Colonel HULL. He was, sir.

The CHAIRMAN. It is dated December 5, 1906, at Jaro, Iloilo. Is this typewritten statement the statement of the bishop?

Colonel HULL. I can identify it. [After examining the paper.] It is, sir.

The CHAIRMAN. He was an American?

Colonel HULL. He was.

The CHAIRMAN. He is now dead?

Colonel HULL. Yes, sir.

The CHAIRMAN. He died when?

Colonel HULL. He died since I left the islands.

The CHAIRMAN. He was formerly stationed in Washington, was he not?

Colonel HULL. He was probably known to a great many of the members of the committee. He was the Doctor Rooker who was secretary of the papal delegation here. He was one of the best-known Washingtonians, a man who was invited everywhere on account of his wit and mental activity, and I think that it would not be out of place to call the attention of the committee, although you may not desire to have it go in the record—

The CHAIRMAN. I want you to state, so that it may go into the record, his mode of life there, his influence in the church, and how he died.

Colonel HULL. I did not have the pleasure of knowing Doctor Rooker at the time that he was in this country. I did meet him in the Philippines as the Bishop of Jaro. I have had a great many personal talks with him, and I know that the man was bending every energy that he could to fix up the buildings and the cause of education in his diocese. I know that the man lived in conditions entirely different from that usually supposed bishops enjoy, on account of expense, and he felt that he could better use the money for buildings and education than he could for living; and I know that the man went hungry, and I have no doubt that his death was probably hastened from the fact that he starved himself for the benefit of his diocese. I know that at times he did not have enough to eat.

The CHAIRMAN. Please tell the committee what he once said to you about a meal.

Colonel HULL. I was there one time, and he told me that he was sorry that he could not have me to lunch that day because he had nothing but native food, and he would not care to offer that to an American; he did not think it was fit to serve to a friend. He lived on fish, rice, and other things that are not palatable to one who has not been thoroughly educated to them.

The CHAIRMAN. What was the condition of the buildings in his diocese?

Colonel HULL. A good many of them were destroyed.

Mr. WASHBURN. What was his diocese?

Colonel HULL. Jaro, Iloilo. I have in my hand exhibits 1562 and 1564.

The CHAIRMAN. What are they?

Colonel HULL. Showing two views of the archbishop's palace at Jaro. I would like to show them to the committee.

The CHAIRMAN. In ruins, is it?

Colonel HULL. Yes, sir.

The CHAIRMAN. Yes, show them to the members of the committee.

Mr. HELM. This man was sent out by the Government?

Colonel HULL. He was appointed bishop at the solicitation of this Government that Americans be placed in charge of these dioceses.

Mr. HELM. Did he receive any compensation from the Government?

Colonel HULL. None whatsoever. He was a bishop of the Catholic Church.

(At this point Exhibits Nos. 1562 and 1564, the same being photographs of the bishop's palace at Jaro, Iloilo, were shown to the committee.)

That building [referring to the palace at Jaro] was in somewhat dilapidated repair when we took possession of it, due to the insurgents. The board allowed a rental of \$50 a month for this building. A part of the building could be used, and was so used for offices—the best portion of it. We estimated that \$50 a month would be sufficient compensation for this building.

Mr. FORNES. For which building?

Colonel HULL. For that building [indicating bishop's palace at Jaro represented in photographs].

The CHAIRMAN. Here is a part of the statement of Bishop Rooker, and I want to read it to you and get your judgment:

Even if the Government were to grant the claims of this diocese just as they stand, the condition of the church here would still remain very much deteriorated in comparison with what it was before the war. The sums asked for would be insufficient to put the property back to its original condition. These amounts are calculated on the basis of damages actually done. Since then, as time has passed, the deterioration to the damaged buildings has increased month by month. This subsequent deterioration has not been included in the claims which have been presented. The repairs to-day would be much more than at time of damage. For example: If the claim made for damages in the parish of Maasin (case 369), amounting to ₱2,000, had been paid at the time they were made the amount would have restored the property to its original condition; to-day that restoration would cost not less than ₱10,000.

Q. Recently you caused contractors to look over the bishop's palace at Jaro?—A. I have.

Q. Did you have any estimate made as to cost of repairs?—A. I had four estimates made.

Q. Will you state what they were?—A. The estimates ranged from 25,000 to 30,000 pesos.

The CHAIRMAN. Do you remember how much you allowed for that?

Colonel HULL. For Maasin?

The CHAIRMAN. Yes.

Mr. WASHBURN. Is that going into the record?

The CHAIRMAN. Gentlemen, I think that it would be well, unless there be objection, to put this statement of Bishop Rooker's into the record. It is his sworn testimony given before the board of which Colonel Hull was president. I would like to hear from the committee on that point of whether I shall order it put into the record.

Mr. CRUMPACKER. I think that it should go into the record.

Mr. WASHBURN. Bishop Rooker is now dead?

The CHAIRMAN. Yes.

Mr. WASHBURN. When did he die?

Colonel HULL. Last year. We recommended at Maasin payment of rent for thirteen months at 50 pesos a month, and 250 pesos, making a total of 9,000 pesos.

Mr. WASHBURN. That is, the claim was for 2,000 pesos and you allowed 9,000 pesos. What was the bishop's estimate?

Colonel HULL. He said that 2,000 pesos would be a fair estimate.

Mr. GRAHAM. If it had been received at that time.

The CHAIRMAN. That was the way the estimate was put in at the time, but the subsequent deterioration would amount to 10,000.

Mr. WASHBURN. I would like at this juncture to ask a question of the chairman that perhaps might be entirely relevant, and that is, what is the attitude of the church toward us now, toward this Government in regard to these claims? Do they feel impatient? Do they feel outraged? Do they feel that justice has been done them? Do they feel quiet?

The CHAIRMAN. I have been chairman of this committee ever since it was organized, and I have never heard a word of discontent on this score. Have you heard anything of the kind, Colonel Hull?

Colonel HULL. They are anxious that payment should be made, naturally. We discussed in the printed report the attitude of the church toward this country.

The CHAIRMAN. If they receive \$363,000 will they feel satisfied, or will they feel aggrieved?

Colonel HULL. They will be very thankful to receive any amount of money, but they feel that, under present conditions, the award is inadequate.

Mr. FARNES. Does this include your whole report—your comments also?

Colonel HULL. That includes the comments of the board. We have subsequent reports later, which are before the committee.

The CHAIRMAN. Apropos to what you have just said, Colonel Hull, I again call the attention of the committee to what Bishop Rooker said. The claim was filed for damages in the parish of Maasin at 2,000 pesos, and the award was made as the colonel has just said.

Mr. WASHBURN. At 900 pesos?

The CHAIRMAN. Yes. Of course, they left out all question of damage, etc., and the bishop said that they waited so long before they got any money—they have not yet received any—that wind and

weather have deteriorated the property very materially, and the contractor says that it would now take 10,000 pesos to put the buildings in condition. The claim is for 2,000 pesos.

Mr. WASHBURN. There is another question that I would like to ask. When was this matter in condition to be acted upon by Congress? When were these investigations completed?

The CHAIRMAN. The matter came before us last year.

Colonel HULL. This is really the first year that you have had all of the documents in your possession.

The CHAIRMAN. The subject came before us at the last session, but unfortunately the documents which you see on that table [indicating] were in the Philippines. They had been here, but were returned to the Philippines via Suez. We cabled for them, but they did not come until after Congress had adjourned. Moreover, we could not get the opinion of the supreme court of the islands touching the question of the title in time to get to work upon the claims. We adjourned on the 4th of March, and some of these things did not get here until after we had gone home.

Mr. WASHBURN. There is one question that I would like to ask Colonel Hull. If this \$363,000 award was a fair one at the time it was made by the Commission, should anything be added to that because of deterioration of property between that time and the time that this matter is acted upon?

Mr. MCKINLAY. Material is higher and labor is higher. There has been an advance in prices ever since that award was made.

Colonel HULL. That award was based not on the value at the time it was made (1905-6), but it was based on the value at the time of the occurrence (1898-1902). I probably have a more intimate knowledge of these claims than any other one man. I have gone over them all, and I know them intimately. I am confident that \$500,000 would not be an excessive award at this time.

Mr. MADISON. Why do you say that? It seems to me that that is very important indeed. In the report you recommend the payment of \$363,000, and you say now \$500,000. Why is that?

Colonel HULL. The principal reason for that is the deterioration that the church has suffered owing to nonpayment.

The CHAIRMAN. Damages?

Colonel HULL. That is the very reason; the consequent damages to these buildings in a country such as the Philippines has been enormous on account of the weather. We mention that in our report, that every day's delay is a loss.

I have two other reasons that I would like to mention on this. The second reason is the fact that I believe that every cent of the money that may be appropriated by Congress will be used exclusively in the rehabilitation and rebuilding of these buildings. I regard the church, outside of the Army, as the greatest single agency for law and order in the Philippine Islands to-day. All this money will go back and help the Filipino people toward prosperity.

Another reason is the enormous losses, beyond calculation—it runs into the millions—that the Catholic Church has suffered, due to our occupation of the Philippine Islands.

Mr. MCKINLAY. Isn't there another reason—that it would cost so much more to rehabilitate those buildings, even more than last year,

because of the increasing scale of the price of material and labor it would cost more to put those buildings back in condition?

Colonel HULL. Prices have increased wonderfully from the time that I first went to the Philippines in 1899, and I have no doubt that this has continued to go on. Five hundred thousand dollars to-day would not do any more than \$360,000 would two years ago. It would do about the same.

Mr. WASHBURN. If this question is to be settled equitably by the Government of the United States, the longer that Congress puts off dealing with the question the larger will be the sum to be paid.

Colonel HULL. Most emphatically so.

Mr. WASHBURN. Just one word more, and I am through. On this particular claim here that we have been discussing, I understand that Bishop Rooker said that the damage done to that property was 2,000 pesos. Am I right?

Colonel HULL. Yes, sir.

The CHAIRMAN. That claim was filed some years ago.

Mr. WASHBURN. You allowed 900 pesos?

Colonel HULL. Yes, sir.

Mr. WASHBURN. But the bishop said when he wrote that report that the damage at that time was five times that amount of 2,000 pesos.

The CHAIRMAN. When he gave his sworn testimony?

Mr. WASHBURN. In this one case we have the very best of testimony that the damage now is at least \$4,500, for which the Commission made an award of something over \$900.

Mr. McKINLAY. No, \$4,500.

Mr. WASHBURN. They made an award of nine hundred.

Mr. McKINLAY. Nine hundred pesos?

Mr. WASHBURN. Yes.

Mr. WASHBURN. They made an award of \$4,501, and the bishop's testimony is that the actual damage when he wrote that report was \$5,000.

Mr. CRUMPACKER. There are two other items that have some basis in equity that are not included in the report, and that ought not to be lost sight of. The board recommends the payment of \$40,000 for the carrying away of sacred ornaments, images, vestments, etc. If we appropriated and carried away \$40,000 worth of sacred ornaments, vestments, etc., it would seem, as a matter of equity, that as a result of our occupation, we might pay for those.

And then there is a church or convento that we occupied for some time, and when we vacated it we deliberately set fire to it and burned it down. Colonel Hull said that it was worth \$220,000. It was burned by order of the American general in command. It was burned, perhaps, for the purpose of preventing the enemy from taking possession of it. At the same time, probably under the law of war we might not be strictly liable. Yet we deliberately seized and occupied that property, and then burned it to the ground and left it. It would seem to me that we might allow a little on that score. I am with Colonel Hull. I do not believe that \$500,000 would be excessive. It would not be compensatory from any standpoint, and it would not be excessive in view of all the aspects of the case, legal and equitable.

The CHAIRMAN. Take up some other claim.

Colonel HULL. I can take Maasin. I have looked up the papers here, and I find a report by Capt. E. L. Butts, who says that the rental of the convent should be 500 pesos a year for about one year, and reports that the convent was improved and repaired by the army by fixing up the floors, interior, etc. I find another report by Capt. F. D. Wickham, whose valuation was about 50 pesos per month, and he also submitted three affidavits in regard to this demand. We recommended the payment of rental for thirteen months at 50 pesos per month. We raised the army officers' report. One was five hundred, and we made it six hundred. We looked up the records and found that the occupancy lasted thirteen months; that was the evidence before the board, and we recommended the payment of rental for that length of time.

Mr. FORNES. So that it was not a purely arbitrary cutting down of the estimates.

Colonel HULL. I just looked this case up to show the action of the board, so as to show what we had before us when we made the estimates.

Mr. MADISON. I was just going to say that it looks as though the reasons here offered by Colonel Hull are purely political, as a matter of fact.

Mr. CRUMPACKER. Partly.

Mr. MADISON. Absolutely so. To my mind, they are the principal ones which should appeal to us. Now, we can not repudiate the findings of the board. There has not been suggested here, to my mind, as a lawyer, any legal basis for increasing this award. I am very much impressed with the fairness and the legal accuracy of the work that this board did with Colonel Hull at its head. It would seem to me, if this committee is going to justify an increase, that there should be some reason for so doing.

Mr. DAVIS. That we could maintain on the floor of the House.

Mr. MADISON. Yes; that we could maintain on the floor of the House. If we have got to do it, we must find some reason, to my mind—some other reason besides that of a legal basis. We have got to put it on political grounds. The question in my mind is whether we can justify this increase. I do not see anything in these claims to justify, perhaps, the payment of the \$40,000 that Judge Crumpacker suggests. We can not find any legal reason for it. The rest of it appeals to me very strongly, because of what this young officer says about the Catholic Church being a very great ally of this Government in the maintenance of law and order. But can we, in increasing these claims, give the Catholic Church an additional \$100,000. If there is any way to do it, I should like to see it done.

Mr. CRUMPACKER. Upon the proposition of legality and equity.

Mr. MADISON. Well, equity always follows law.

Mr. CRUMPACKER. There are some things that have an equitable aspect that Congress recognizes. We paid the Methodist Church for occupying its property down here. How much was that?

The CHAIRMAN. About \$200,000.

Mr. CRUMPACKER. Yes; about \$200,000, when it was admitted on the floor of the House that the occupancy perhaps was not worth \$50,000. But it was a church, and its activities were practically paralyzed by the civil war, and it was in sense understood all the

way through that the allowance of the \$200,000 was to help the cause down there.

Mr. MADISON. Well, if that will go, it is enough for me. That is enough for me if it will go.

Mr. DAVIS. I would like to express my views upon this proposition while we are in committee.

When an action for damages arises between two individuals in consequence of a tort or otherwise, the amount of the damages is fixed by the court at the time of commission thereof. Delay in the award or the final payment has nothing to do with it except as to figuring and awarding the legal interest from the time that the damage occurred. Hence I believe that we would be in a bad position if we were to go before Congress and say that because of our delay in the payment of this award it should be raised other than by the amount of the legal interest on the amount that was then due upon the amount of the damages, because everyone is supposed to take his damaged property, the instant the damage is done, and go to work and repair the same. Of course in this instance the church would plead poverty, but that is not a legal excuse. Every man is held to be responsible for what he is supposed to do.

The equitable part of this proposition appeals to me very strongly, because Colonel Hull has said that the board went into the legal aspects of it only and in very few instances considered the equitable part of it.

Colonel HULL. You are mistaken about that, Mr. Davis, as you will see if you will read the end of the report.

Mr. WASHBURN. Did you take into account—

Colonel HULL. We acted as a court of equity as far as we could, all the way through.

Mr. DAVIS. This committee ought to fortify itself, then, with further equities that you took into consideration and not go before that body of lawyers and say that because of our delay in the settlement of the claims we are going to raise the amount. That is no legal excuse.

Mr. MADISON. You make a suggestion there that is very pertinent. We might allow legal interest from the date of the award, but not jack the amount up from \$363,000 to \$500,000 because of the delay.

The CHAIRMAN. Let me say a word right here before we proceed. All this discussion would properly come in executive session of the committee after we have finished hearing the testimony. I think that we will expedite matters if we defer the discussion as to the lawful and equitable damages until we do go into executive session and now permit the Colonel to tell us what they did.

Mr. FORNES. I second that. Let us get all the information that we can, and then we will take up the matter in the committee.

Colonel HULL. I want to refer to the testimony of the Secretary of War. Under the first class mentioned in his letter, some of the members might think that they amounted to a great deal. The amount of the award was \$18,245. Under class 2, in the Secretary's letter which he read to you the other day—

The CHAIRMAN. Please specify what this particular class is.

Colonel HULL. The Archbishop's palace and the cathedral.

Under class 2, mentioned in my letter to the Secretary, on which his letter was based, there was an erroneous amount of the claim of

the Paco church of 150,000 pesos. In regard to the occupancy of these buildings, in almost every case the buildings were in the hands of the insurgents; they were driven out and our occupation immediately followed, as mentioned in the report, exclusively as fortifications. I won't say exclusively, but frequently as fortifications. They fired therefrom upon our troops as they advanced.

The question of wanton damage has played quite an important part in the discussions here in the committee. There has evidently been a misunderstanding on the part of some of the committee as to the actual facts. The wanton damage refers mainly to these articles of loot, also to fire, but where partitions were taken down, where walls were scratched, where nail holes were made, and where there was the usual waste during the occupancy of the buildings by the soldiers, such as is liable to be committed by soldiers, such was not considered as wanton and was duly considered.

The CHAIRMAN. But not for loot.

Colonel HULL. That was against orders. There never has been an army in the history of mankind that behaved itself with more propriety than did our army in the Philippines. The comparison between the army in the Philippines and the allied armies in China was most marked. The United States has nothing to apologize for in this regard.

Mr. DAVIS. They did not imitate Napoleon in Italy.

Mr. McKINLAY. Some of the boys in China did. You would think so if you saw the stream of loot that came into San Francisco after the expedition in China.

Colonel HULL. But even then the American forces were much better than the other armies. I hope that I have made myself plain as to what the Board rejected and what it put in. Of course we did reject burnings and we did reject loot, except as mentioned in the report.

The CHAIRMAN. Have you any other claims that you might go through in a hurried way, in order to show the committee how you acted upon them, and to show what was taken into consideration?

Mr. MADISON. Do you know what is the rate of legal interest in the Philippine Islands?

Colonel HULL. During this period it was about 8 per cent, and most of these things took place in 1899 to 1900. A few of them extended up as far as 1902.

Mr. GARRETT. Is that the rate of the Spanish-Filipino Bank or the usual rate?

Colonel HULL. The usual rate on A No. 1 commercial paper. Of course, the rates of the usurers run away up to the ceiling.

The CHAIRMAN. The usurers' rates run up as high as 80 per cent, all the way from 20. One went even as high as 110 per cent.

Colonel HULL. I can take up the case of Mexico, Pampanga. Here is the report on that case [indicating].

The CHAIRMAN. What is the number of that claim in the printed pamphlet? Do you remember?

Colonel HULL. It is Exhibit No. 512. It is case No. 242. Here is a claim for 124,700.24 pesos for rental and damages to church and convent.

The CHAIRMAN. Let us get that in dollars. It would be about \$62,000.

Mr. FORNES. And you allowed \$1,100.

Colonel HULL. Here is a long claim which I will not take time to read, as a great part of it was for bricks and lumber. According to the claim the property was completely surrounded by lumber and bricks. Here is a report by an officer of the army whose name is P. J. Hennessey, second lieutenant of the Fifth Cavalry. I should judge from his name that he is a Catholic. Here is his full report of that case, and besides that the Board took testimony. The priest was punished by a military commission for aiding the insurgents. The board felt by the time that they got through with that case that the claim of the church in this instance was not substantiated. We found that a lot of these bricks had been used by the Spanish troops in the insurrection of 1896 in building trenches against the insurgents, and that they had also been used by the insurgents in building trenches against us, and that the people used the lumber. That claim was cut down to what we thought was a reasonable basis. On the other hand, at the same time we had that priest before us—his testimony appears farther on—there was a priest from a neighboring place, San Fernando, Pampanga. When that priest got through testifying, there was not a member of the Commission who did not believe him.

I have here a number of pictures. Here is Exhibit No. 1554, a very large building which we used as a hospital.

The CHAIRMAN. Just pass it around the committee, please.

Colonel HULL. There was a large hospital located at Nueva Caceres. Here is a large school which was used by the troops [indicating]. Here is a cathedral, Exhibit No. 1555 [indicating], at Nueva Caceres. The cathedral at Manila is larger. I have here a photograph of a convento in San Fernando (Exhibit No. 1578) which was injured by shells from the United States troops. Nothing was allowed for such damages, it being held that the destruction was an act of war. Here is Exhibit No. 1559, the Bishop's Palace at Vigan. This was also used by the troops. Here is a church at Pilar, Sorsogon (Exhibit No. 1576). The evidence showed that it had been burned three times by the insurgents.

(The photographs were exhibited to the committee.)

Mr. FORNES. Are those pictures a part of the record?

Colonel HULL. Yes, sir. I am just identifying them. No. 1568 is a church at Basey, Samar.

The CHAIRMAN. Let me suggest that I be permitted to have it published as a part of the report of these proceedings.

Mr. GARRETT. I am in favor of that.

Colonel HULL. Exhibits Nos. 1565, 1566, and 1567 are pictures of a church and convento that were destroyed by the American troops as an act of war. They were situated at Hilongos, Leyte, looking out upon the Mindanao Sea. They were used as fortifications by the Spanish people. No. 1560 is a photograph of a girls' school at Vigan, which was used as a hospital.

Mr. GARRETT. I move that the chairman of the committee be requested to select and put into the hearings the more important of these pictures.

The CHAIRMAN. That would enable the House to see the character of the buildings.

(The question being put, the motion carried.)



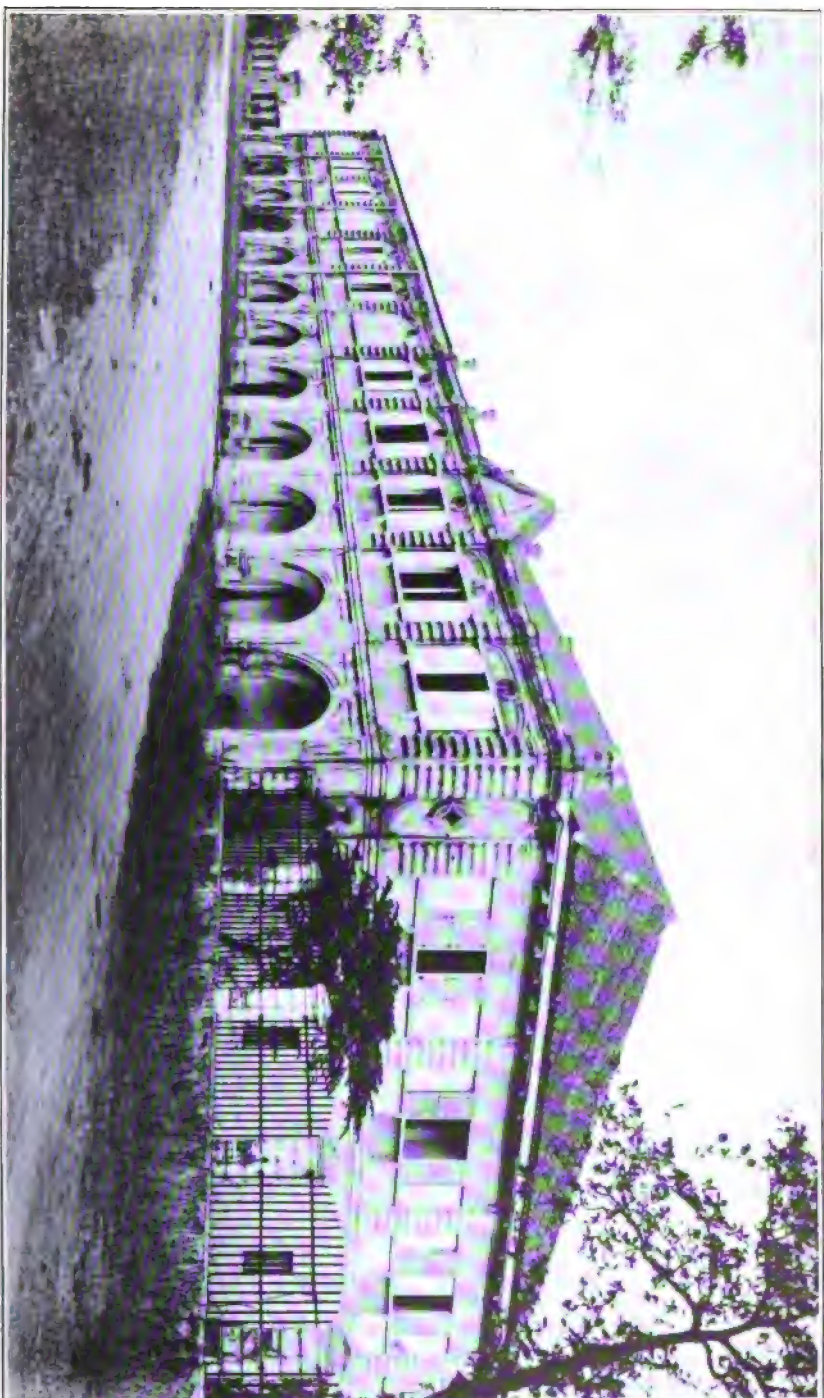
SEMINARIO (BOYS' SCHOOL) NUEVA CACERES, AMBOS CAMARINES, EXHIBIT NO. 1554.



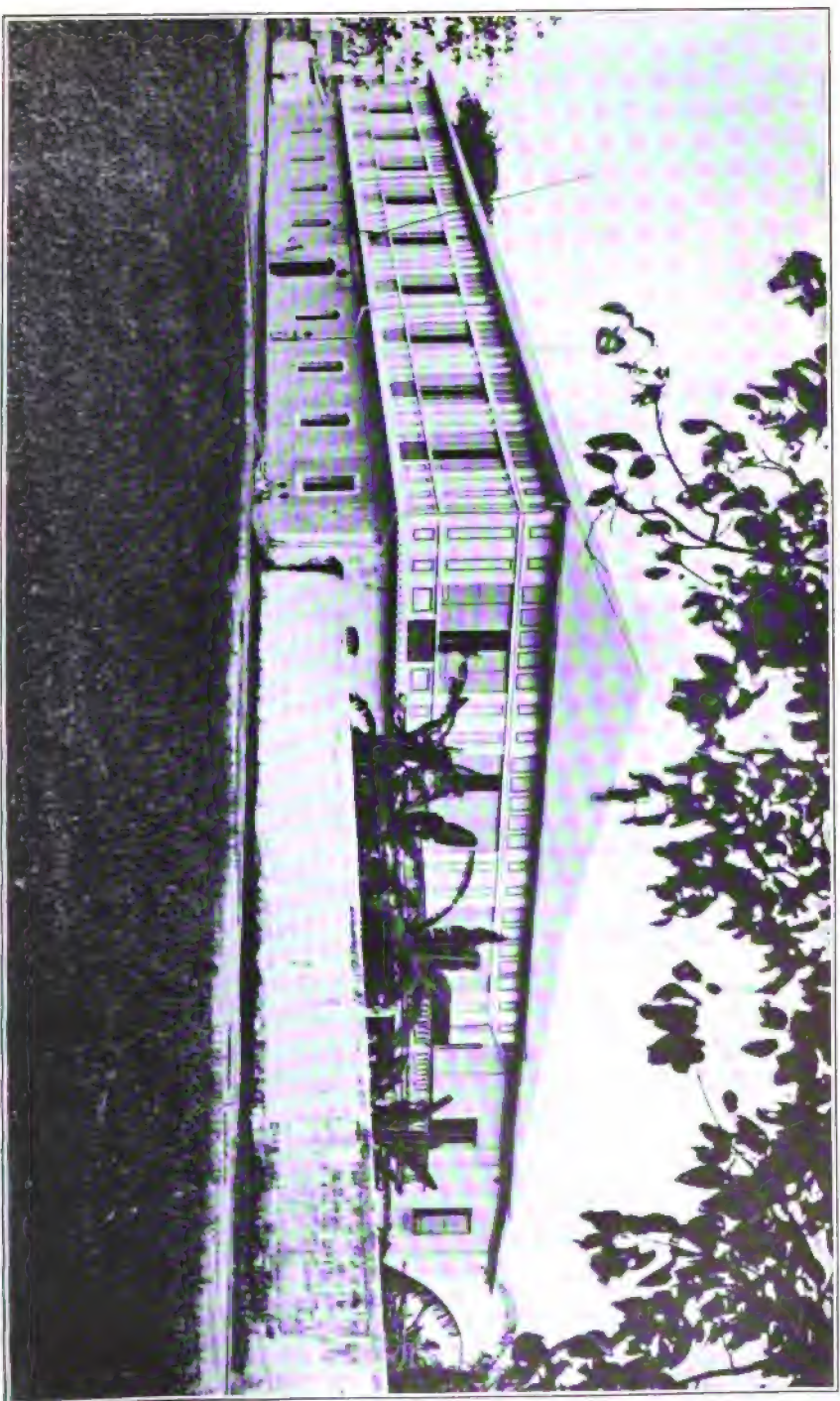
CATHEDRAL, NUEVA CACERES, AMBOS CAMARINES, EXHIBIT NO. 1656.

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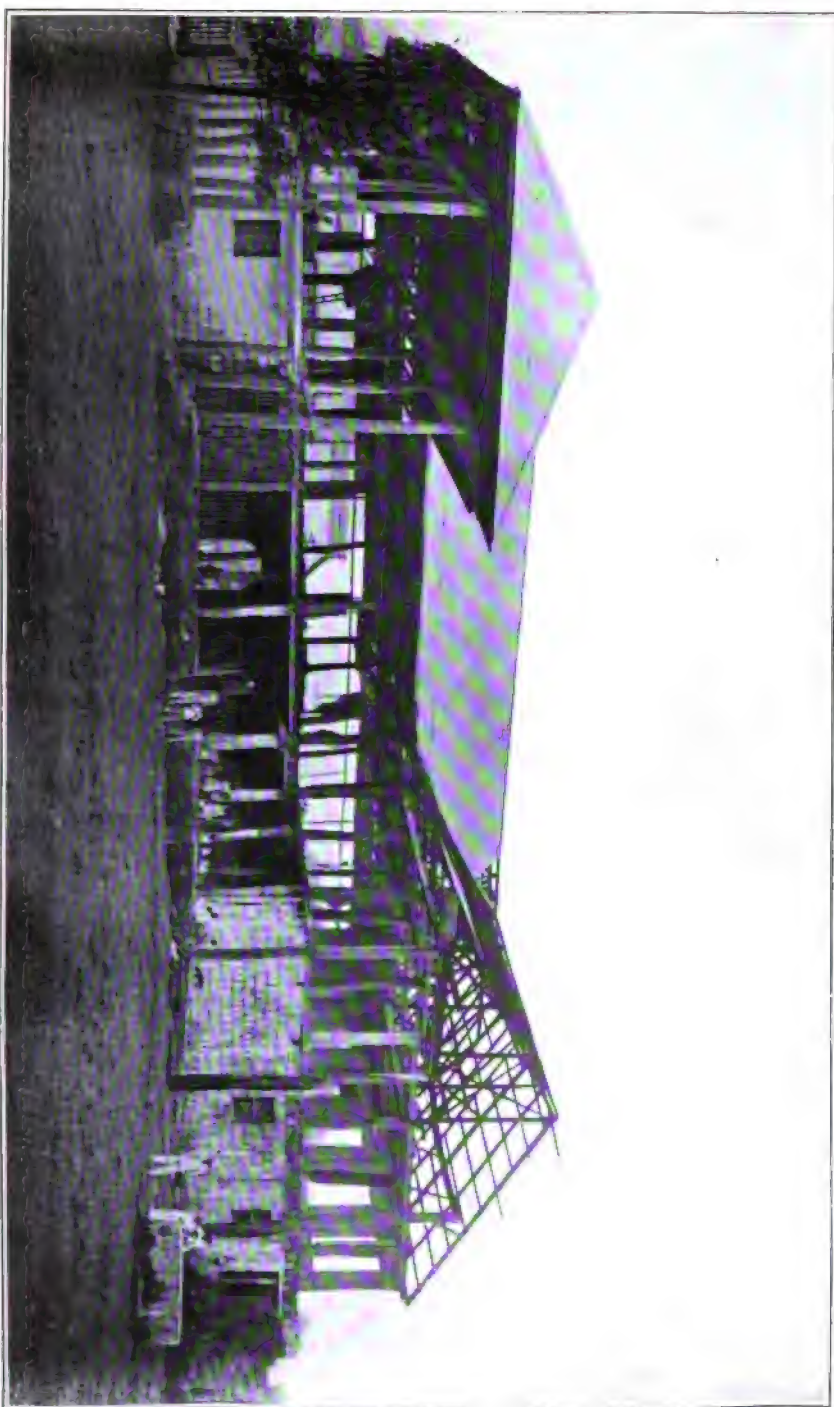
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GIRLS' SCHOOL, VIGAN, ILOCOS SUR. EXHIBITIONO. 1560.



BISHOP'S PALACE, NUEVA CACERES, AMBOS CAMARINES, EXHIBIT NO. 1653.



REAR VIEW OF BISHOP'S PALACE, JARO, PANAY, IN DECEMBER, 1906. EXHIBIT NO. 1564.

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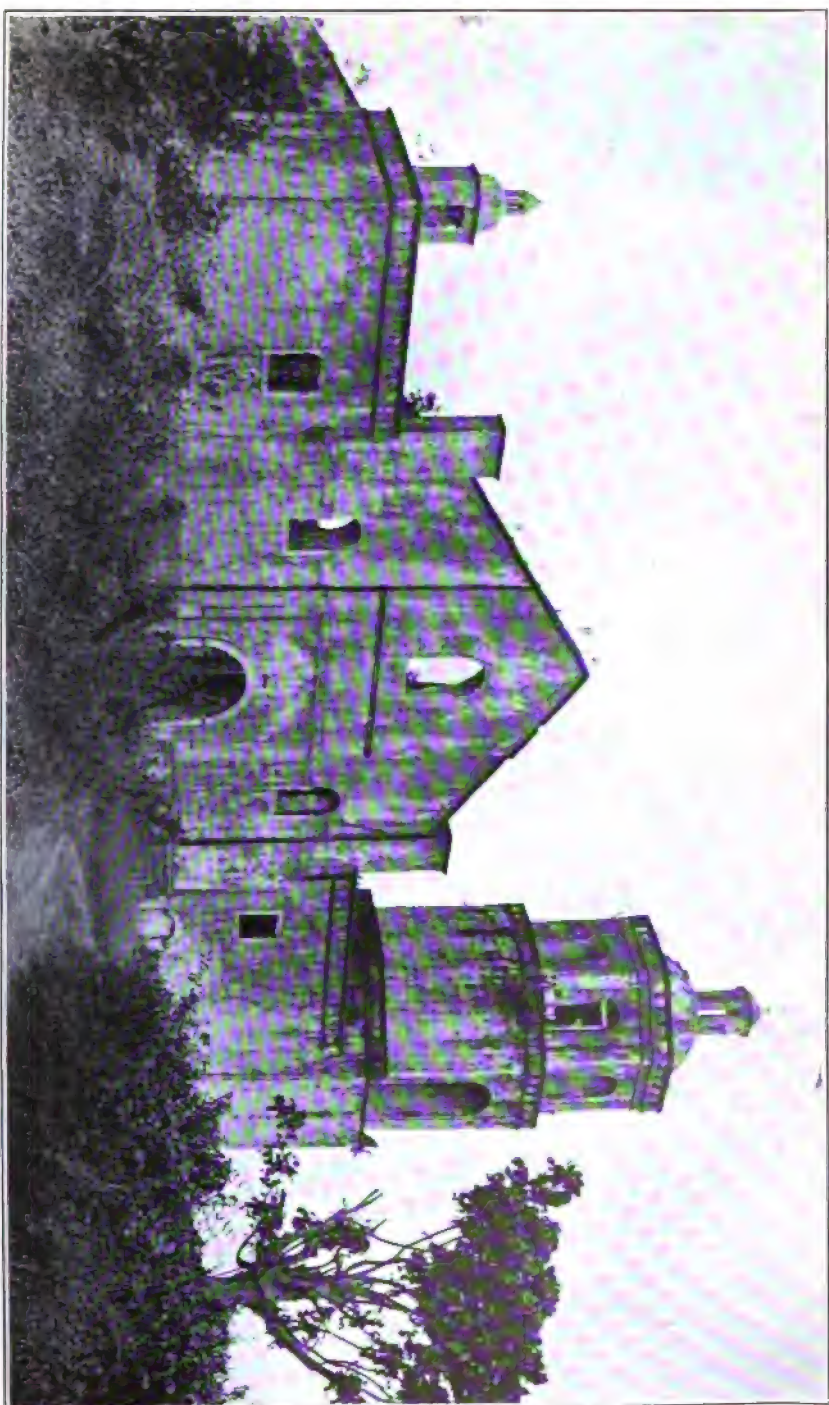
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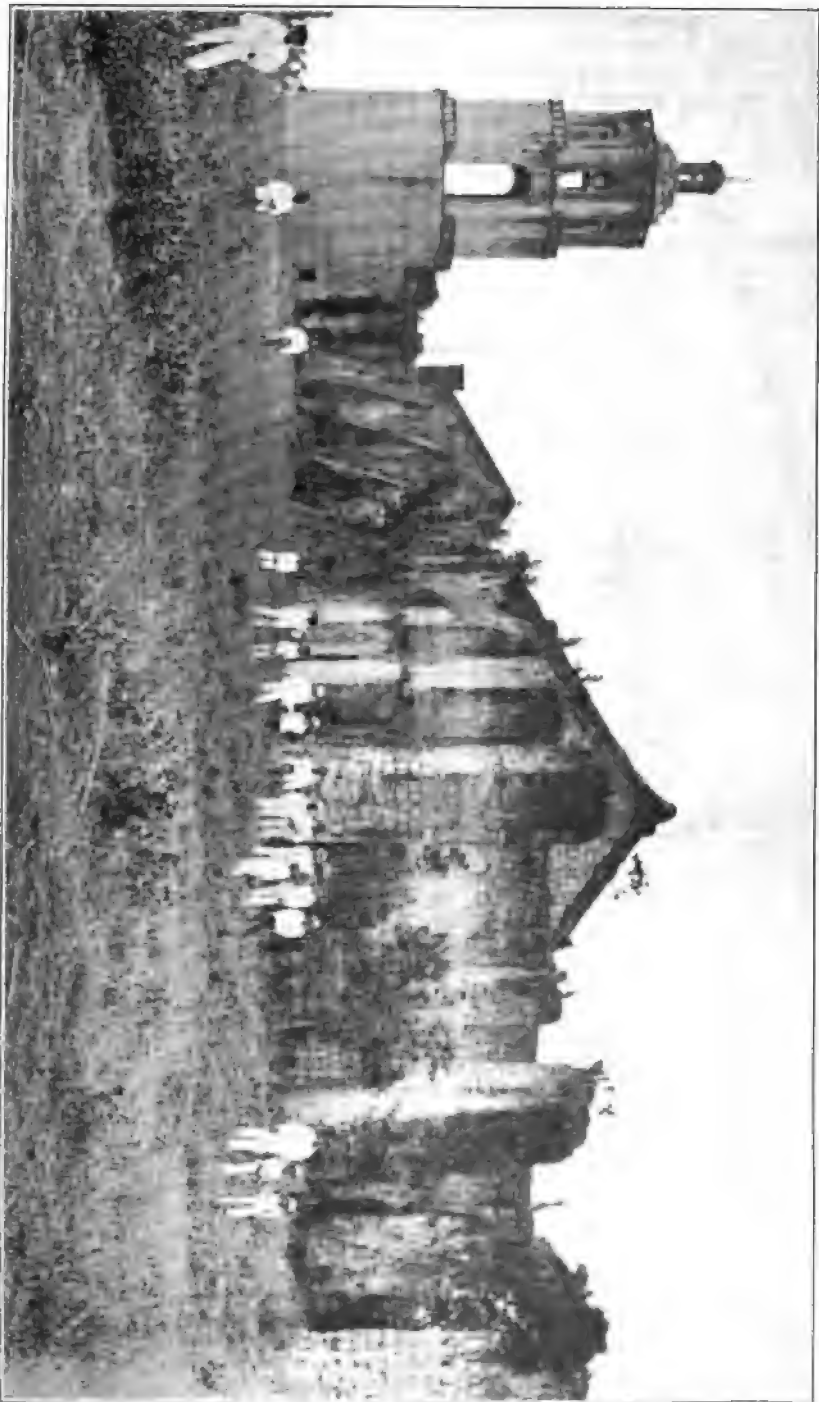
1958

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1960



FRONT OF CHURCH AT HILONOGOS, LEYTE, AFTER DESTRUCTION. EXHIBIT NO. 1666.



SIDE VIEW OF CHURCH AND CONVENTO, HILONGOS, LEYTE, AFTER DESTRUCTION. EXHIBIT NO. 1566.

Colonel HULL. There is another thing that I would like to say. I notice that in the correspondence read by the Secretary that the Government reserved the right to contest these claims on the ground that the priests in charge of the parish had taken an active part in the insurrection. The question was not looked into by the board as to whether an award should in fact be made or not. You will remember his reading it. We investigated to see whether the priest would be one inclined to put in a hostile or exorbitant claim, or whether he was liable to put in a reasonable claim.

The CHAIRMAN. We have reached the hour of adjournment. There are some other things that the members of the committee desire to question the Colonel about, and I will therefore call another meeting of the committee for to-morrow morning at 10.30 o'clock.

(At this point the committee accordingly adjourned, at 11.55 a. m., until to-morrow, Wednesday, January 22, 1908, at 10.30 a. m.)

COMMITTEE ON INSULAR AFFAIRS,
HOUSE OF REPRESENTATIVES,
Wednesday, January 22, 1908.

The committee met at 10.30 o'clock a. m., Hon. Henry Allen Cooper, chairman, presiding.

The CHAIRMAN. My purpose this morning is to go over as many of these claims as possible, and to have Colonel Hull show us just how the board acted upon them.

STATEMENT OF COL. JOHN A. HULL, U. S. ARMY—Continued.

Colonel HULL. I suggest that in order to make it a little fairer, that each individual member of the committee present select at random such cases as they may desire to see.

The CHAIRMAN. Very well. Mr. Graham, do you wish to select a case? What we desire to get at is as to what the board did, and also as to the merits of the claims.

Mr. GRAHAM. I will ask for No. 350, Vigan.

Colonel HULL. All of the Vigan papers are not here, but I have most of them.

Mr. GRAHAM. It is for 20,885 pesos.

Colonel HULL. That was an exceedingly large claim, and a very important one, and it was given careful consideration by the board. There is one of the items in this claim, namely, the damages to the library and furniture, the seminario or boys' school, which is almost the only claim where the board and the church authorities arrived at directly opposite conclusions.

The CHAIRMAN. That is the boys' school?

Colonel HULL. The boys' school. There is a girls' school there also. There is a seminary, a girls' school, and bishop's palace.

The CHAIRMAN. When you speak of the boys' school you mean the seminary?

Colonel HULL. I mean the seminary. This item was for a large amount of books and furniture. The bishop was confident of the justice of the claim. There have been five members of the board

who have investigated that claim, and we have all held that the claim was not well founded. The papers have been multitudinous. Every officer who has been to Vigan has furnished his statement. The board feels that the testimony of Major Dodd, who is now lieutenant-colonel and chief of staff at Chicago, is conclusive, and that the testimony furnished by the church fails to substantiate the claim.

Mr. OLMSTED. What particular claim? I see you recommend some things here.

Colonel HULL. That was for the damages.

Mr. OLMSTED. Damages to the palace?

Colonel HULL. Damages to the boys' school. The report is very full and voluminous on that. Major Dodd's report consists of thirteen pages, with two exhibits.

The CHAIRMAN. Is that the report which you have in your hand?

Colonel HULL. Yes, sir. It is entirely too long to read, but if anyone is interested they can go into it.

The CHAIRMAN. Major Dodd is a United States Army officer?

Colonel HULL. Yes, sir. This exhibit [indicating] is Exhibit No. 904 of the exhibits attached to the report of the board, in addition.

Mr. OLMSTED. I understand, of course, that all of the exhibits which you have would make too much of a record for publication of the proceedings of this hearing, but would it not strike you as a good idea, Colonel, to have, for instance, that exhibit which you hold in your hand, which explains the method and how the recommendations in claim No. 350 were arrived at, printed in the record?

Colonel HULL. This does not show how we arrived at our conclusions; it only shows why we rejected the largest item of this claim.

Mr. OLMSTED. It covers that one item.

Colonel HULL. It shows why we rejected that one item, the largest one.

Mr. OLMSTED. I suggest that, without stopping to read it, we insert it in the record.

The CHAIRMAN. Is that the sense of the committee? If so, I will order that it go into the record.

UNITED STATES ARMY RECRUITING STATION,
1316 FILBERT STREET,
Philadelphia, Pa., January 18, 1905.

Maj. T. W. JONES,
*Thirteenth U. S. Cavalry, in charge of investigation of claims,
Philippine Division, Manila, P. I.*

(Through military channels.)

SIR: In compliance with request contained in your letter of November 4, and forwarded me by indorsement of December 14, 1904, from the office of The Military Secretary (paper herewith returned), I have the honor to submit the following statement regarding a certain claim referred to in your communication.

I was not with the first United States troops to enter Vigan; as, in fact, I personally arrived there in the latter part of December (about the 28th, I think), 1899, while my troop arrived on or about the 2d of January, 1900. Aside from repeated absences, while actively engaged in the field, I was absent sick from some time in November, 1900, until some time in March, 1901, finally leaving the place for the United States the latter part of June, 1901. My statement, therefore, will cover more particularly what I know of conditions and transactions in the premises during the time of my presence, but in order to throw additional light on the subject I shall refer, as the different articles for which claim is made are dealt with in detail, to facts known to Frank G. Gehman,

now a private in the general service, but who was a sergeant in my troop (F, Third Cavalry) when it first went to Vigan, and who was its first sergeant when it left, some time in February or March, 1902, and supplement my remarks with the substance of relevant statements recently made by him to me.

When I first arrived at Vigan there were two troops of the Third Cavalry quartered in the colegio, or seminary building proper, while some of the other so-called public or church buildings, except the church proper, were occupied by other troops and used for other United States public purposes, this use being made necessary by the hostile condition of the country.

Upon the arrival of my troop it was also quartered in the colegio, along with the other two troops mentioned, and this building remained the troops' permanent quarters, except when in the field, up to the time that I turned it over to my successor and left Vigan, and, I understand, until it left the place for the United States some time in the winter or spring of 1902. Some time after my troop had been quartered in the building one of the troops first quartered there was removed, leaving the building to the remaining and my own troop, the space being divided between the two organizations, that portion formerly occupied by the vacating troops falling to mine. I am informed that the remaining troops, as well as F troop, was quartered in the building up to the time the regiment left.

When my troop entered the building and during its occupancy there was property, as articles of furniture, etc., scattered through and in the vicinity of it, some of which could be used, while some was of no use whatever. What this property consisted of, in its entirety, I do not know, as I know of no inventory being taken of it, and I considered that I was responsible and custodian of it only so far as it was my duty to see that that which was in my portion of the building was not subjected to wanton destruction and vandalism; and, during my stay that duty was strictly performed, the property, under stringent orders, being well cared for and in no way suffering damage. I am informed that after my departure the same obtained and that my former standing orders remained in force to the time of the troop's departure.

As already stated, I did not know and can not recall just what property was in the building; but in reading over the list for which claim has been made I recognize many articles which I know were in the building, and in good condition, when I left; articles, the subsequent, or at least more recent, history of which Gehman has been able to furnish me.

For convenience I shall deal with the classes of articles in detail, adding such remarks as will cover what I know in each case.

First. Library: Reported to have contained 6,000 volumes, more or less, valued at \$6,300, with the claim that only about 250 were recovered.

Remarks: When my troop first entered the seminary building it was found that a large number of books, the appearance of which indicated that they formed part of a school or college library, were scattered, not only throughout the building itself, but in the yard, court, and plaza, while the bulk was stored in one or two rooms, the doors and windows of which were in no way secured, these rooms being in that portion of the building formerly occupied by the troop first to vacate. Later I made details from my troop, caused the books to be collected wherever found, stored in a suitable room, and personally supervised the proper securing of the doors and windows of that room, and made public positive orders that under no consideration would that room be opened or entered except on the order of the district or post commander. Verbal report of what I had done was made to the district commander, who approved of my action and sustained me in the order I had issued, making it applicable not only to men of my own troop, but to all others, and in consequence thereof proper notice was posted on the door.

The gathering of these books together from all sorts of places, moving them to a safe place, securely storing them and taking strict means to prevent their being molested, all entailing extra work, was entirely gratuitous, being done from a sense of duty that requires the prevention of wanton waste and destruction of that which was of value to others, and not from any sense of accountability for or custody of the property.

The order forbidding the opening and entering of the "book room" was not disobeyed during my presence, and I believe was obeyed during my absence. Gehman assures me that it was.

On the 3d of May, 1901, having been promoted out of, but still on temporary duty with, the regiment (Third Cavalry) I received a memorandum order, copy

of which is hereto attached marked "A," directing me to turn over to, and allow the removal of the books in question by, a Father Laminage, whom I understood to be a friar. Note was made of the character and condition of the books. As the list indicates, they were generally of an ecclesiastical character, while their condition was generally good—as good as the books of an old library usually are, except some that had been gathered up from different places and had been misused, and even many of them were in a fair, serviceable condition, while some were torn and mutilated. These latter were, as a rule, small and less valuable volumes, while the larger ones remained in good condition and intact.

The order authorizing the removal of the books was brought to me by Father Laminage, who was accompanied by two other clerical individuals, whom I understood were also friars; and in the presence of these persons, or at least one of them, the books were counted and removed, a proper representative of the Government being also present.

Although, as stated, not directly accountable for the books, yet anticipating that the future would develop just such a claim as this, and precisely the action that the claim indicates, after a due and satisfactory verification had been made I took and have retained Father Laminage's receipt, copy of which is herewith inclosed marked "B." The original of this receipt is in my possession and will be forwarded if desired. It is thought, however, the inclosed official copy will answer the purpose.

By way of explanation regarding the wording of the receipt, it may be said that by "pamphlet" is to be understood paper-bound or covered books, some being very large volumes, in contradistinction to those more substantially bound, and not small pamphlets as the term is ordinarily used with us, so that the total number of books in the bibliothecal sense was 2,043 (parts of badly mutilated ones not being counted), instead of the 250 claimed. These books, *when turned over to Father Laminage*, were nearly all packed in bookcases or movable shelves, and, I believe, the cases were about all filled. At any rate cases to hold even approximately 6,000 volumes, or half that number, were not in the building, and fully the number of cases, payment for which claim is made (see remarks under eighth subject), were filled.

Undoubtedly some of the books of this library were destroyed, mutilated, lost, or carried away; but, judging from what I knew, I am firmly of the opinion that the claim to a loss of 6,000 volumes, or that 6,000 volumes, or near that number, were in the library, is as false and preposterous as the one made to the effect that but 250 volumes were recovered by the church authorities. This opinion is strengthened by a conversation I had with Father Laminage after the books had been removed and at the time he gave me the receipt. I explained to him the condition in which the books were found and the means taken to gather and secure them; whereupon he expressed great gratitude and profound thanks. He stated that, though there was *some* loss, he was satisfied that it was comparatively small—a very small percentage, much less than he expected—and that he was satisfied that what loss had occurred was due to the vandalism of the insurrectos, and most effusively expressed thanks to the *Americanos* for the care they had taken of the church property, casually referring to the fact that the church proper had been entered and molested by the insurrectos only. The Father's two confreres heartily corroborated his opinions and expressed them as their own.

Ex-Sergeant Gehman states that he is fully cognizant of the condition of the books when the troop entered the building; the fact of their being collected by my order and properly secured; that stringent orders were given forbidding the opening of the room in which they were stored; that these orders were obeyed, and that the books were removed by representatives of the church.

I have gone into this portion of the subject with what may seem unnecessary minuteness, but the flagrant falsity of this, the most important portion of the entire claim, being well established suggests the possibility of throwing light upon and establishing the spuriousness of other portions, known or believed to be groundless, yet whereof no written and incontrovertible proof can be produced, as in this case. All circumstances and conversation connected with this library I vividly and distinctly recall.

Second. Three large narra bedsteads.

Remarks: These were in the building, in good condition, when I left. Ex-Sergeant Gehman informs me that they were there when the troop vacated and is able to specify the location of each bed. When the library was removed I

called the attention of Father Laminage to the fact that they were in the building, just as when the troops entered, and advised their removal in case the building was not to be rehabilitated at an early date. He admitted that they were "all right;" that they were safer there than anywhere else, but that they probably would be removed later.

Third. Forty-three (43) iron bedsteads.

Remarks: Do not recall ever seeing any in the building. Gehman says positively that there were none. The troops slept on the floor until the Quartermaster was able to have made and provide bamboo bunks.

Fourth. Twenty-four (24) narra wood escritoirs.

Remarks: There was a number of these articles, small school desks, of a very plain and cheap grade, scattered through the building when I left. Gehman assures me that he saw them all collected and removed by the parish priest long before the troop left.

Fifth. One (1) narra minister's escritoire; one (1) escritoire pupitre.

Remarks: When I left, these articles, or what I supposed were the ones referred to, were in the room formerly used as a chapel. Gehman informs me that when it became necessary to use this room for other purposes the articles were partitioned off and made secure at one end of the room and were there, in as good condition as when found, when the troop left.

Sixth. Tables:

1. One (1) large round table, one meter radius, etc.

Remarks: I saw no such table in the building during my occupancy. Gehman says there was none.

*11. One (1) quadrilong table * * * one meter wide, etc.*

Remarks: Saw no such table as this. Gehman says there was none.

111. Tables assorted, aggregating eight (1) in number.

Remarks: There was a number of cheap, plain, ordinary, tables, of different kinds, in the building, but I do not recall the number. They were there when I left and, Gehman says, were in the building, in good condition, when the troop vacated. These tables were very ordinary and cheap.

Seventh. Assorted benches, aggregating thirty-seven (37).

Remarks: There was a number of cheap, plain, ordinary benches in the building when I left, the exact number and kind of which I do not know. Gehman says they were there when the troop left. There were probably more benches left by the troop than were originally in the building.

Eighth. Book shelves, aggregating six (6).

Remarks: These book shelves were turned over with, and removed at the same time as the library. I saw them taken from the building, under the supervision of Father Laminage and his assistants.

These were the shelves and cases purporting to have contained 6,000 volumes, more or less, but which were about filled with 2,043 volumes. I know of no other book shelves or cases. Gehman is cognizant of the facts in the case.

Ninth. Wardrobes, aggregating three (3).

Remarks: I recall seeing a number of wardrobes in the building, were there when I left, do not recall the number. Gehman says they were there when the troop left. One left in orderly room.

Tenth. Blackboards, aggregating fifty-one (51).

Remarks: Do not recall seeing any, neither does Gehman.

Eleventh. Chairs, aggregating twenty-eight (28).

Remarks: There was a number of chairs, assorted, scattered through the building, don't know how many. As in case of the bedstead, and at the same time, I called Father Laminage's attention to, and pointed out a number of chairs, which I presumed were for ministerial purposes, and which seemed to me to be of some value. Attention was called to the fact that the chairs were in good condition, had been kept where they could not be used by the troop and removal advised. Again the reply was that they were safe where they were but that they would probably be removed later.

Gehman assures me that all of the chairs were collected and removed by the parish priest at the same time as were the school desks.

Twelfth. One (1) clock.

Remarks: This was standing in the hallway at the head of the stairs—was there when the troop left. It did not run and was not used. It is probably still there or somewhere in the building.

Thirteen. Lamps, aggregating seven (7), and two (2) globes.

Remarks: I think some unserviceable lamps were around the building; am not positive. Gehman says there were none.

Fourteenth. Writing desks, numbering two (2).

Remarks: I know that I pointed out at least one of these desks to Father Laminage, and I think two of them. They were there when I left. Gehman says when the troop left, one in the orderly and one in the captain's room.

Fifteenth. Kitchen, dining room, etc.

Remarks: Neither Gehman nor myself ever saw any of these articles. My troop used their field cooking outfit and individual mess kits until the quartermaster was able to provide regular garrison kits.

Sixteenth. Fruit trees.

Remarks: Never heard of or saw any fruit trees belonging to the building; neither did Gehman.

The foregoing covers what I now recall as being relevant to the case, my memory being greatly refreshed by reference to the list of property furnished me, and for which claim is made.

Although, as already stated, I was not with the first troops to enter Vigan, yet, knowing what I do of the conditions there existing, I can to no extent whatever credit the claim to the effect that the colegio was refitted or in any way rehabilitated between the time of the departure of the Insurrectos and the arrival of the United States troops, and am firmly of the belief that the statement that such was the case is devoid of even a scintilla or veneering of truth, and not intended to be taken seriously.

It is a well-known fact that, for weeks, while the raid "around Tarlac," and northward through the northern provinces of Luzon, was in progress, the United States troops were practically and continually on the heels of the Insurrecto forces, the latter being driven from town to town and from one position to another; that in almost all cases these towns were practically abandoned by their inhabitants, who either fled, through fear, or were forced to accompany the Insurrectos; that these same Insurrectos in no way respected the rights of the regular inhabitants, but left in their wake a trail of devastation, by way of looted houses and churches and wanton waste and destruction of property of every description; that owing to the valuable, portable fixtures and treasure they were supposed to contain, taken with the bitter antagonistic sentiment for the friars, the churches, and church buildings, especially those with which the friars were closely identified, as was the case with the colegio and other church buildings at Vigan, suffered great deprivations. Few, if any, of the church official representatives remained in those vacated towns. I recall, as an instance in question, that while camping in a large town a member of my troop unearthed, at a point near where my horses were picketed, some valuable church fixtures, as lamps, candelabra, etc. (as I recall them), supposed to be of silver. In the entire town I was unable to find a representative of the church to receive the property, and finally was obliged to turn it over to the presidente, taking his receipt for the same, with promise that it would be restored to the church as soon as possible.

Again, on my arrival at Vigan I found the room which had been used as a chapel entirely dismantled, even to the extent of the floor being torn up. I was assured, not by Americans, but by Spaniards and friendly Filipinos, that this was the work of the Insurrectos, and that they tore up the floor in search for treasure and valuable church fixtures supposed to be hidden there or thereabouts.

Taking everything into consideration, I am of the opinion that, unless conditions surrounding the property in question underwent the most remarkable change subsequent to June 28, 1902 (and I don't believe they did), any just claim in the premises should be in favor of the Government; for it would seem that this property, instead of being injured, destroyed, or confiscated, was cared for and restored to the church authorities by the troops—a fact voluntarily, most openly, and gratefully acknowledged to me by Fr. Laminage on or about May 5, 1901, as already cited.

I am free to admit that, in the light of facts, it seems not only astonishing, but incredible, that a claim of the scope and character of this should be urged, and that presumably from a source from which honesty and fair dealing might reasonably be expected. Loss of memory on the part of the claimants, if they are the personages with whom I had to deal, with hope or expectation that others should be similarly afflicted, seems to be the most generous explanation.

As not exactly relevant to the subject proper, yet bearing on the subject of claims which may arise, I venture to volunteer the information that the question of rentals of buildings, used by the government in Vigan, was acted upon

and adjusted in the spring or summer of 1901 by a board of officers, of which Maj. (now Col.) E. Z. Stever was president and I was a member. I do not recall the entire results of the board's work, but a certain percentage of the value of each building was allowed as rental. It is now my impression that the proceedings and recommendations of the board were acted upon by the district commander.

The matter is mentioned only in order that in case it should come up it may be known that the matter was at one time adjusted.

Necessary papers and confirmatory information not being at once available has occasioned some delay in the rendition of this report.

Any further information in my possession which may have escaped me in this paper I shall be delighted to furnish.

I am, Major, very respectfully,

GEO. A. DODD,
Lieutenant-Colonel Tenth Cavalry.

A.

Major Dodd: Gen. Bell has given permission to Father Laminage to take the library books which are in your troop quarters.

He desires you to turn them over to him and take note of the books and their condition.

Very respectfully,

JOHN GREEN BALLANCE.

Vigan, May 3rd.

A true copy.

J. W. POPE,
Lt. Col. & Dep. Q. M. Genl., U. S. Army.

B.

VIGAN, LUZON, P. I., *May 4th, 1901.*

Received of Major Dodd 1,843 books and 200 pamphlets, church property.

FR. F. LAMINAGE.

A true copy.

Lt. Col. & Dep. Q. M. Genl., U. S. Army.

Colonel HULL. In addition to that I have seen a letter written by the administrator of this diocese, in 1901, to the commanding general of the Department of the Philippines, thanking him for the great care which the United States troops had taken of the church property at Vigan. Major Dodd's report says that the minute he went in there he took every piece of property that he could find, all of the library, and the loose pieces of furniture, such as would not be useful to the troops and which would be liable to injury or to be stolen, and put them under lock and key. He treated this property with even almost more care than an officer ordinarily would United States property, yet two years afterwards this claim is presented for carrying away of 6,000 books, or something of that kind. This is one claim where the board and the church authorities arrived at directly opposite conclusions as to the facts.

The CHAIRMAN. The claim was for 67,500 pesos.

Colonel HULL. As I have just stated, some of the exhibits are missing. The original claim is missing from these papers now.

The CHAIRMAN. And you awarded 20,000 pesos. In other words, you cut it down over two-thirds.

Mr. OLMSTED. How much did they claim on this one item for damages to the seminary?

Colonel HULL. In the neighborhood of \$6,300 gold for the library.

Mr. OLMSTED. Dollars or pesos?

Colonel HULL. Dollars. That is the one big item.

Mr. OLMSTED. And that you disallowed entirely?

Colonel HULL. We disallowed it entirely, although there was doubtless a small amount of loss.

Mr. OLMSTED. This claim was made two years after our people had vacated the premises?

Colonel HULL. Virtually so.

Mr. OLMSTED. Was there any evidence showing whether any books had been removed between the time of our vacating the premises and the making of the claim?

Colonel HULL. The books that were then extant were turned over to the church authorities prior to our vacation and a receipt taken therefor.

The CHAIRMAN. At this point in the Colonel's testimony we will insert what we find on page 29 of the report of the board, concerning claim No. 350, so as to make the record show just what the award was in items:

No. 350. Vigan, Ilocos Sur. Claim for rent and damage to palace, seminary, girls' school, and corral, amounting to ₱67,500.80.

We recommend payment as follows: Palace, rent, twenty months, at ₱175 per month, ₱3,500; palace, damages, ₱1,200; seminary, rent, thirty-seven months, at ₱200 per month, ₱7,400; seminary (no damages); girls' school, rent, thirty-seven months, at ₱175, ₱6,475; girls' school, damages, ₱1,200; corral, rent of grounds, thirty-seven months, at ₱30, ₱1,110; total, ₱20,885.

(Exhibits 895-951.)

Colonel HULL. I am sorry that in the documents here I have not been able to find all of the Vigan papers, but I can explain also where there was a wide divergence. For instance, in the case of this building [indicating photograph] this is a picture of the seminary [photograph exhibited to the committee] there was a wide difference of opinion as to the rental value. We had a report from an Army officer as to what he considered the value of the premises. We had the claims of the church, and I think—I am speaking from memory—that the report of the board was somewhere between the claim of the church and the report of the Army officer. If you will look at the item in the report of the board, you will see what we allowed for the rental of the seminary.

The CHAIRMAN. That is, \$100 per month for the building, the picture of which you have in your hands. Now, how much did you allow for the bishop's palace?

Mr. GRAHAM. One hundred and seventy-five pesos a month.

Colonel HULL. Here is a picture of that building. Since the award was made I have been—

Mr. FORNES. May I ask a question at this point? What did you estimate the cost of that building?

Colonel HULL. Oh, I could not give that estimate now.

Mr. FORNES. A couple of hundred thousand dollars?

Colonel HULL. I would not care to say.

Mr. OLMSTED. Of what is this bishop's palace constructed, stone?

Colonel HULL. It is evidently of stone. Since we made this award the board took occasion to go to Vigan, and we went over these buildings very carefully to see whether we had been wrong or right in our original conclusions. I talked to Colonel Brodie about it, and we saw no reason for changing our recommendations. We thought that what we allowed there was proper, according to our best judgment. The other building—

Mr. GRAHAM. The girls' school was 175 pesos a month. Connected with the bishop's palace there seem to be extensive grounds. Did you use them also?

Colonel HULL. We used the grounds somewhat. The grounds extended back and were very extensive. They extended back to the river, running along back of the bishop's palace and back of the girls' school.

The CHAIRMAN. We will put in the record at this point the amount of this reduction, which was, in dollars, from \$38,750.40 to \$10,442.50.

Colonel HULL. If I had all of the exhibits here, with the reports of the officers and the original claims of the church, I could make a more complete statement.

The CHAIRMAN. Does that bundle of papers on the table all relate to this claim?

Colonel HULL. The papers all relate to this claim, but the original claim and the original reports of the surveying officers of these buildings I find are missing from the papers that I have here.

The CHAIRMAN. It is your present judgment that this reduction of \$28,000 from the original claim was just and that the award should stand?

Colonel HULL. I think so.

The CHAIRMAN. Does any other member of the committee wish to ask about any particular claim?

Mr. DAVIS. Why not take No. 351 there?

The CHAIRMAN. Mr. Garrett desires to ask a question.

Mr. GARRETT (to Colonel Hull). Your method of procedure and your mental processes, if I may put it that way, were the same in regard to all these claims?

Colonel HULL. Virtually so. On these larger claims we worked as a body, but on the smaller ones we very often divided them out, and each member of the board would take an individual claim and prepare it for submission to the full board.

Mr. GARRETT. Who would find the facts?

Colonel HULL. The board would find the facts.

The CHAIRMAN. Where you took oral testimony, were the witnesses sworn?

Colonel HULL. Yes, sir. We would see what we could find. Mr. Brodie would take a case, and Mr. Moore would take a case, but in these larger claims the whole board acted together as a body. The original preliminary investigation was made by the individual members of the board.

The CHAIRMAN. That is, when you took testimony you acted as a body.

Colonel HULL. All of the testimony was taken by the board as a body.

Mr. GARRETT. I would like to suggest that Colonel Hull take some case—I do not care which one—and present the exhibits here in such a manner that one case may be completely published here.

Mr. OLMSTED. A case that would be typical of most of the other cases.

Mr. GARRETT. Typical of the general run of the cases. Of course, I think that, perhaps, he might select the case because no one else could select it as well.

Colonel HULL. I do not think that I could select a case typical of all.

Mr. DAVIS. Let us have No. 351.

Colonel HULL. What is the exhibit numbers?

Mr. DAVIS. Nos. 952 and 955. This seems to be a claim for rent and damages to church and convent, which seems to cover most of the cases. This claim is for rent and damages to convent and church.

The CHAIRMAN. I had in mind exactly what Mr. Garrett stated, but it was the suggestion of Colonel Hull to me, in conversation, that he be not called upon to make a selection of cases, but that the selection of cases be left to the members of the committee, so that there would be nothing of prearrangement. He wanted the committee to select any case from this record, and said that he would be prepared to explain it.

Mr. GARRETT. That is very commendable; I did not want to impose upon him the making of the selection. All I want is to get a typical case in that record.

The CHAIRMAN. He wished the board to be perfectly justified, and so preferred that the selection of particular cases be made by the committee.

Mr. OLMSTED. Let me ask you how large a place Vigan is?

Colonel HULL. Vigan is one of the most important places in northern Luzon; I should say that the population is somewhere in the neighborhood of 100,000.

Mr. OLMSTED. How much of a place is Goa?

Colonel HULL. Goa is in the southern portion of Luzon. We had the exact figures before us all the time, but we have not got them here now. Goa is not as large a place as Vigan.

Mr. FORNES. May I ask which case this is?

Colonel HULL. Case No. 351. The case is presented on the affidavits of three of the natives. Translated, it reads:

That the American troops during the war against the Filipinos occupied for eighteen months, from the 26th of June, 1900, until December, 1901, the priest's house of the pueblo of Goa, and that the rent that should be paid for such occupancy amounts to 2,160.

There is also a claim for damages.

Mr. LARRINAGA (translating). "Fifty pieces of wood 9 yards long and 6 points"—I don't know what this means in the Filipino language; I suppose inches—"6 points thick, at 9.15 each piece."

Mr. OLMSTED. Nine dollars for a piece of wood?

Colonel HULL. Yes, sir. Timber, building timber, 9 yards long.

Mr. LARRINAGA (continuing translation). "Nine yards wide by 6 inches thick, at 9.75 each," \$9 and some cents each.

The CHAIRMAN. Dollars or pesos?

Colonel HULL. Yes; in pesos.

The CHAIRMAN. Do those items indicate the general character of the claim?

Colonel HULL. They run down.

Mr. LARRINAGA. The first item makes 1,522 pesos.

Mr. GRAHAM. As I understand it, the Commission cut all that out. They did not allow any damages besides for rent, so that it is not necessary to go into that at all.

Colonel HULL. There is a claim for building materials, for furniture, for a small carriage, for a wall clock, for 79 pieces of galvanized iron, and for destruction to the stairway and to the bricks of the passageway, making a total claim of 4,666.90 pesos.

Mr. DAVIS. You allowed 2,200 pesos for damages for something?

Mr. GRAHAM. I thought that you had cut that all out.

Colonel HULL. I have here a memorandum prepared by our searching of military information as to all the officers in the commands that had served at Goa during our occupancy of the buildings there. I find here several letters that we wrote to the officers, asking for information, and I find here a report signed by George P. White, captain and quartermaster:

Report on the Roman Catholic Church, etc., used by the Army.

"1. Town, Goa; province, Ambos, Camarines; island, Luzon, P. I."

"2. Use to which the building was applied before American occupation—such as churches, convents, church schoolhouses, bishops' or priests' residences, hacienda buildings, offices, etc."

As a convent and also as a dwelling of the local priest.

"3. General description and size of structures, whether stone, wood, nipa, etc."

This was a large building, the first story of stone and the second of wood, size about 100 feet front and an ell of about the same dimensions. The roof was of corrugated iron. The basement was useless for dwelling purposes and never so used as I would judge from the building itself.

"4. Military use to which property has been applied—such as barracks (stating number of men or companies), hospitals, officers' quarters, storehouses, offices, etc."

From April 7, 1901, to the time I left, about May 15, 1901, we used the upper story for barracks and the lower ones for storehouse purposes. This was only by a detachment of about 35 men of the Ninth Cavalry, Troop C.

"5. Was the building or other property used by the forces of the insurrection or at immediately previous to the occupation by the United States troops, or by civil authorities or constabulary, with dates thereof?"

At the time I took charge of the building I relieved a company of the Forty-seventh Volunteer Infantry under command of Captain Goodman. Further than this I do not know.

"6. Reporting officer to estimate value of rental during period of United States Army use of same, rental values to be based on rents current during period of occupation and use. If boards of officers have already reported on question of rent, refer to same, when, and by whom forwarded. Reporting officer will also give his estimate of the value of buildings, in Philippine currency."

The rentals were different in each town that was occupied by the United States troops and the question of rental of this town never came before me during my stay of a month and a half. No records whatever were given me and I know nothing of any board being appointed to judge the same.

"7. Has any prior claim been made to the military authorities for rental or damages, or has any amount been paid? If so, give necessary information to trace action."

None to my knowledge.

"8. How long were buildings occupied by Army, giving dates?"

I only know as to dates given.

"9. Have any buildings occupied by the Army been injured, wantonly or accidentally, or have they been improved and repaired by the Army? Give all facts and amounts. This item is very important, and full remark is requested."

This building was in no way damaged by troops during the time I was there nor were any improvements made except that a stable for thirty horses was erected in the lot back of the building on land supposedly belonging to the church premises, but at the time unused and overgrown with weeds. No past records were kept at this station and the morning report was sent regularly to San Jose de Logonoy, which was considered as station headquarters, under command of Major Paxton, Thirteenth Infantry (then captain, Fifteenth Infantry). I was the only officer with the command at Goa during the period, and when ordered away no one took my place, but the detachment was left under command of the first sergeant of Troop C, Ninth Cavalry.

My belief is that no damage whatever was done the building while occupied by the United States forces.

Brief statement of Church claims submitted to board:

-----months rental at \$-----
 Damages -----
 Total -----

GEO. P. WHITE.

Captain of Cavalry, Quartermaster U. S. Army.

Place, Presidio of San Francisco, Cal.

Date, September 29, 1905.

That is a very poor report. It is not as full as the ordinary reports we received.

There was also at the sessions of the board Bishop Barlin, who had a certain amount of personal knowledge of the facts, and my interpreter. He had been down through this portion of the country as the official interpreter at the headquarters of this district, and had been in most of these buildings, so that we probably had in front of us, at the time this case was considered, my employee of large personal knowledge, and the bishop, who had personal knowledge of the case, and this report that I have indicated, from which to arrive at our finding. What was the amount of the award?

Mr. GRAHAM. Four thousand pesos.

The CHAIRMAN. Two thousand dollars.

Colonel HULL. Yes, sir. The rental was 100 pesos.

The CHAIRMAN. That is \$50 a month.

Colonel HULL. They claimed at the rate of 150 pesos per month, and we cut that to 100 pesos.

The CHAIRMAN. They claimed at the rate of 150 pesos, and you cut that down to 100 pesos?

Colonel HULL. Yes, sir. For the damages they claimed \$3,263.45. We reduced that to \$1,100. We probably cut out a large portion of the claim for wood building material.

Mr. DAVIS. If you will allow me to make a little statement and ask a question right there?

Colonel HULL. Certainly.

Mr. DAVIS. This is a claim for rent and for damages to the church and convent. Are not a great majority of the cases for rent and damages to the churches and convents?

Colonel HULL. Yes, sir.

The CHAIRMAN. Mr. Davis, please make plain what you mean by "convent."

Mr. DAVIS. It reads "convent" in the report.

Colonel HULL. We used the word "convento" for not only the conventos, but also for the parish houses.

Mr. DAVIS. That does not have any reference to a seminary, a girls' school, or boys' school?

Colonel HULL. Oh, no.

Mr. DAVIS. Then the majority of the cases in this report are similar to this; it is only a question of different locality and different circumstances.

Colonel HULL. The church was not occupied at Goa.

Mr. DAVIS. In this particular case have you data as clear and explicit upon which to base your findings, as ordinarily?

Colonel HULL. No, sir.

Mr. DAVIS. Then this is one of your weak cases as to damages. I think that it would be well to have in the record the way in which you arrived at your conclusions, because in this case documentary evidence was wanting more than in the other cases. Hence, if it came up on the floor of the House, I do not see why this would not be a good case for illustrating to Congress the method by which you arrived at your conclusions.

Colonel HULL. The claim was for rental and damage to the buildings. We found that we had no report from the military authorities, and the bishop of the diocese made a verbal statement in regard to the case, and we then proceeded to go to The Military Secretary's office and got all the names of the officers who were there and the length of time the troops were in the town. We then proceeded to write to the officers who had been there for information.

Mr. DAVIS. And that was the only way that you had of obtaining the facts?

Colonel HULL. Without going to the town itself.

Mr. FORNES. May I ask a question?

Colonel HULL. Just allow me to complete this statement, so as to make it complete. Upon the receipt of this very poor report of Captain White's, with our knowledge of the conditions existing, and the fact that our interpreter was in the same town and could give us information in regard to it, we thought that we were able to dispose of the case approximately correctly.

Mr. DAVIS. Without visiting the place?

Colonel HULL. Without visiting the place. If we had visited all of these places we would never have completed the work, and if we had waited for positive testimony one way or the other, we would never have completed the work, but here is a case where there is a claim for a lot of building material. Now, our general experience showed us that where the church authorities had been driven out of their possession by the insurrectionists, where they had an immense amount of building material, the natives of the town were not opposed to carrying off that building material, and that the United States was afterwards charged with taking it away.

Mr. DAVIS. Then you indulged in the presumption—

Colonel HULL. We gave the Government the benefit of the presumption that the natives had carried away part, at least, of the material.

Mr. OLMSTED. Then the claim for building material was exaggerated, I should say. I should say that \$4.50 was a very high price for a plank.

Colonel HULL. These were very big beams. We took up with the merchants of Manila the valuation of these logs, and we found that the amount alleged for the lumber was ordinarily the commercial rate charged, but the question arose as to the amount of the lumber, and the method by which the church had lost it.

The CHAIRMAN. I understood you to say that besides the officers to whom you wrote, you had the sworn testimony of Bishop Barlin.

Colonel HULL. He was before the board.

The CHAIRMAN. And you also had your interpreter, who was familiar with the case.

Colonel HULL. I think that the interpreter was familiar with this case. Wherever there was one of these cases, in which he had been in the town, he would give us his personal knowledge.

Mr. DAVIS. Then you used and sought for the best testimony available.

Colonel HULL. We tried to do this in all cases. I would not like to say positively that this interpreter was in that town. There are too many cases for me to say positively that this interpreter was in that particular town. I can not remember positively.

Mr. DAVIS. The best evidence is all that can be expected.

The CHAIRMAN. Yes.

Colonel HULL. Now, you can see that where there was some lumber, boards—things like that—some of that would be likely to be used. I should say, in going over this case again, in view of the fact that we built a stable out in the back yard for the shelter of the horses, that it is very likely that we used some of that lumber and galvanized iron. It is very likely that we used some of those beams or joists, and poles.

Mr. DAVIS. It is natural to suppose that you did.

Colonel HULL. There is also a claim for the destruction of some of the bricks. By going through the claim in that way I could segregate to a great degree the number of items that we allowed, but I probably could not arrive at the exact figures that we did at the time we made the investigation.

Mr. DAVIS. Would the statement of facts that you have just put into the record apply to similar cases all over the islands, generally speaking?

Colonel HULL. Generally speaking, this was the way we obtained our information, although I can say that in most of the cases the reports of the army officers were better.

Mr. DAVIS. This, then, is one of the poorest cases, or, at least, was backed by the least positive and direct evidence; one of the poorest cases.

Mr. HELM. What variety of timber was that referred to in this case?

Colonel HULL. It was always "hard wood," building material, such as beams and things that would be used in the construction and repair of buildings.

Mr. GRAHAM. Is hard wood generally used for that purpose in the islands?

Colonel HULL. Oh, always by the natives. We are the only people who use soft wood.

Mr. FORNES. When you speak of a convent or convento, would not that term be known in this country as a monastery?

Colonel HULL. To a certain degree. We explained in the back of our report the meaning of the word "convent," and how we used it solely for the purpose of convenience. See page 37 of our report.

The CHAIRMAN. Let us be specific about it. You say "church and convent" in this case. A convent here in this country is usually understood as a home for sisters of charity.

Colonel HULL. In this case it was the priest's house adjoining the church.

The CHAIRMAN. It was not a home for sisters of charity, as we understand the word in this country?

Colonel HULL. Oh, no indeed.

The CHAIRMAN. It was the priest's house.

Colonel HULL. The parish house.

Mr. MADISON. What we call the parish house or rectory.

Colonel HULL. Yes, sir.

Mr. LARRINAGA. There is a question there that I can answer. The convento was, of course, the dwelling house of the friars or of the priests of the community. There is no altar there; nothing but a dwelling house. The monastery means something else. It is a large church which has an adjoining room for the priest to live there, and it is a much more monumental structure than a convento. But the dwelling house for the friars and monks is not a church.

Mr. FORNES. As we understand it in this country, a church and rectory.

The CHAIRMAN. Yes. Will some other member of the committee select some other claim?

Mr. PAGE. Mr. Chairman, suppose we take No. 290, Exhibits Nos. 646 to 652.

The CHAIRMAN. No. 290, Taal, Bantangas. Before you say anything, Colonel, let us get the amount of the claim and of the award. The claim was for 18,885 pesos, that is \$9,000 and over; and the award was 6,625 pesos, or about \$3,300. It was cut down about \$6,000.

Mr. PAGE. I selected No. 290 merely in the hope that it would show some better evidence than the colonel got out of the other case we have just gone over.

Colonel HULL. One member of the board, Mr. Moore, was stationed, I think, in this town, and was with the troops that first went into Batangas, and had personal knowledge of most of these Batangas cases. Naturally, he worked up the Batangas cases on account of his personal knowledge of the facts.

Mr. FORNES. Can you recall the population of that town?

Colonel HULL. No, I could not say.

Mr. FORNES. Six or seven thousand?

Colonel HULL. Oh, yes; more than that. The claim reads [translating], "For the occupation of the convent by the American troops from January, 1900, to July, 1903, at the rate of 200 pesos a month, amounting to 8,476 pesos."

The CHAIRMAN. What did you award on that? Do you know?

Mr. OLMSTED. Thirty-five pesos a month.

Mr. PAGE. That depends upon whether it was the old or new church. It seems that there were two there.

Mr. FORNES. Does the report mention the size of the church?

Colonel HULL. We will come to that in due time. I think our reports will show that. [Continuing translation:] "For the occupation of a suburban piece of property—the property of the church—during three years and six months, the rent for which we have a right to claim at the rate of 25 pesos a month, amounting to 1,050 pesos."

Mr. GRAHAM. Is that what was referred to in the report as the corral?

Colonel HULL. I think that is evidently what we referred to.

Mr. GRAHAM. You allowed 12.50 pesos a month.

Colonel HULL. That is a very good rent for a piece of land in a town of that kind. There is a list of destructions and disappearances which the American troops had caused in the convents of this church and objects pertaining to the same. I see that there are 4 doors, amounting to 50 pesos; 10 locks of iron, 10 pesos; 4 boards, 20 pesos; 2 wardrobes, 14 pesos; 2 others, 16 pesos; large round table, 100 pesos; 2 benches, 40 pesos; 13 shades, 20 pesos; destruction to privy house, 6 pesos; image of patron saint, 200 pesos; 2 ciriales, which is the emblem that they put around the heads of saints, and 2 crosses, 50 pesos. These are all church ornaments and vestments. There is also an altar, 2,000 pesos; bell, 25 pesos; large table, 80 pesos; silver hanging chandelier, worth 500 pesos. That amounts to 2,936.50 pesos in all. The rents of the buildings which they had the right to occupy were put at the rate of 150 pesos per month from January, 1900, until the month of July, 1903, amounted to 6,357 pesos.

Mr. FORNES. Is that statement from which you have just translated, sworn to?

Colonel HULL. These statements are all sworn to by the natives.

Mr. GRAHAM. As I understand it, Colonel, you discounted all these claims, and make the total damages 850 pesos, which means that you disallowed almost all of these claims.

Colonel HULL. Yes, sir.

Mr. OLMSTED. On what ground were they disallowed?

Colonel HULL. Improbability, I should imagine. Here is a report in Spanish made by the presidente. It is the report of the local presidente.

The CHAIRMAN. Please explain right who the presidente is.

Colonel HULL. He is the mayor of the town. The report gives a diagram of the buildings.

Mr. LARRINAGA (translating the report):

TAAL, April 18, 1903.

Señor E. A. HICKMAN,
First Lieutenant Cavalry, No. 1.

SIR: In answer to your courteous letter of the 17th of the present month. I can inform you that, first, according to the decision of the municipal council of this pueblo on the 22d of July, 1901, there are certain properties or municipal conventos and churches in Taal, but, in view of the protests presented by the priest in charge of this parish, at the meeting held on the 26th day of the same month of July, the council declared the property of the Roman Catholic Church such establishments, although they were built with the product of personal taxes in the country; second, that before the occupation by the Americans these convents were used as dwelling places for the priests of the town; third, the convent used before the occupation of the U. S. troops; fourth, the Americans occupied them since the 18th day of January, 1900, if my memory does not fail me, constantly until the present day. It is not known that payment has ever been asked for the rent of those edifices by any apos-

tolie authority; sixth, that such establishments or buildings are the property of the Church.

This is all that I can inform you in the premises.

Colonel HULL. Here is a report from Capt. Edwin A. Hickman, first lieutenant, First Cavalry.

REPORT ON ROMAN CATHOLIC CHURCH BUILDINGS, ETC., USED BY THE ARMY.

1. Name the owner, such as: (a) The Roman Catholic Church; (b) The ——— religious order; (c) The ——— company (Limited).

2. Use to which the building was applied before American occupation—such as churches, convents, church schoolhouses, bishops' or priests' residences, hacienda buildings, offices, etc. (See report in Spanish attached.) Made by presidente, than whom there is no more responsible person to consult.

3. General description and size of the structures, whether stone, wood, nipa, etc.

Church on hill in Taal: Convent wing in use only. Stone foundation, tile roof, wood superstructure with shell windows. Front, 118 feet; width, 57 feet; wing, 111 feet by 48 feet, with kitchen included in length, which is but 32 feet wide.

Church on river in Taal: Same as above—but very old and in poor repair. Front, 64 feet; width, 36 feet; wing, 56 by 38 feet.

4. Military use to which property has been applied—such as barracks (stating number of men or companies), hospitals, officers' quarters, storehouses, offices, etc.

Convent on hill in Taal used as barracks; 85 to 100 men.

Convent by river in Taal used as quarters for civilian employees; 15 to 20 men.

5. Was the building or other property used by the forces of the insurrection at or immediately previous to the occupation by the United States troops? (See presidente's report attached.)

6. Reporting officer to estimate value of rental during period of United States Army use of same, rental value to be based on rents current during period of occupation and use. If boards of officers have already reported on question of rent, refer to same; where, when, and by whom forwarded.

Convent on hill in Taal: Records quartermaster's office reads "Occupied before arrival of Sixth Cavalry, April 21, 1901." No record left prior to that date. No board of officers. Thirty dollars gold per month would be fair and reasonable rental.

Convent by river in Taal: Record quartermaster's office reads "Occupied since March 15, 1901. No rent paid." No board of officers. Fifteen dollars gold per month would be fair and reasonable rental.

7. Has demand or request ever been made for rent by church authorities or to vacate the premises? If so, refer to papers, by whom; when, and where forwarded.

No record in this office. (See presidente's report attached.)

8. Dates between which the army occupied the structures from American occupation to March 1, 1903. (See answer to No. 6.) Both buildings occupied at date of this report (April 21, 1903).

9. Have provincial or municipal authorities officially or verbally claimed that these buildings are public and not church property? Forward or refer to papers, if any. (See presidente's report attached.)

10. Have any such buildings occupied by the Army been injured, wantonly or accidentally, or have they been improved and repaired by the Army? Give all facts and amounts.

Convent on hill in Taal: Not injured wantonly or accidentally. No improvements or repair by Army worth mentioning.

Convent by river in Taal same as above. The church to which the convent is attached has suffered from abandonment and lack of care. Altar has been torn up. By whom, unknown. From all appearances and surroundings, this building had not been used for church purposes for several years.

(NOTE.—All buildings at any one post or station to be covered by one report if practicable.)

Place.—Taal, Batangas, P. I.

Date.—April 21, 1903.

EDWIN A. HICKMAN,

First Lieutenant, First Cavalry, Commanding Post.

Colonel HULL. We recommend 90 pesos a month for the rent of the convent and new church.

Mr. GRAHAM. Ninety pesos?

Colonel HULL. Yes; \$45. For the occupation of the convent at Taal, which was occupied by the quartermaster, he estimates 30 pesos. We raised that to 35 pesos.

The CHAIRMAN. Two dollars and a half more.

Colonel HULL. Even that not being deemed sufficient, we wrote to Major Morgan. He wrote to the board from Fort Riley, Kans., as follows:

FORT RILEY, KANS., *October 30, 1905*

I certify that Taal, Batangas Province, P. I., was occupied by my battalion of the Twenty-eighth United States Volunteer Infantry January 21, 1900. It had been captured one or two days before by a combined movement of troops under Col. George S. Anderson, Thirty-eighth United States Volunteers, and Maj. W. H. Johnston, Forty-sixth United States Volunteers. The town had been put in a state of defense, trenches and barricades in the streets, prominent hills fortified, and the great church referred to by De Gracia and Mitra as the "parish church" had been gutted and prepared for defense; also the "Holy Church of the Cay Sa Say," situated under the hill, had not been specially prepared for defense, but the image of the Virgin and all her accessories had been removed.

Upon assuming command of the place all property left was duly guarded and cared for, and was as found while the Twenty-eighth Infantry, United States Volunteers, was in charge of the town, up to December, 1900.

During the Malvar campaign, December, 1901, to April, 1902, I was again in command of the district, and found the church property practically as I left it in 1900.

As a condition precedent to accepting the surrender of the insurgent forces at Taal, I required that the sacred image of the Virgin Cay Sa Say and her belongings be returned to the church, and about January 12, 1902, this was done.

Trying to induce the priest in charge to bring back the sacred image and church property, I called upon the archbishop of Manila and informed him of the disappearance of the image and church property. He informed me that I was mistaken as to the church vestments; that, anticipating the outbreak, he had caused all of the rich vestments to be removed to Manila, and at that time they were under his charge; that he would use his best efforts to get the image back to its sanctuary, but that the priest, Castillo, in charge was very insubordinate, etc.

Making it a military requirement, as above stated, the image was returned by Castillo the day of the surrender, and a few days later all the rich vestments, altars, etc., were returned from a hiding place on the volcano island in Lake Taal. All this property was duly turned over to the vicar of the district, Padre Montenegro. No receipt was taken by me, but I understood that the whole was returned.

The few vestments left in the parish church were of little value, and were carefully guarded, nevertheless.

I note that the water tank in the parish church, which had been made of lead, was evidently used for bullets, the organ pipes for making shrapnel shells, etc.; articles thus manufactured were found in Taal, and natives informed me that was the use made of these articles.

Maj. Sam Crawford, of the constabulary, may be able to give further evidence in regard to this matter. He was a captain of my battalion, Twenty-eighth United States Volunteer Infantry.

GEO. H. MORGAN,
Major, Ninth Cavalry,

*Late Major, Twenty-eighth United States Volunteer Infantry,
and Chief Commissary and Acting A. D. C.*

Mr. GRAHAM. That is the reason you cut out these damages for stuff taken away?

Colonel HULL. This officer testified that he had taken full care of all property left in the church. Part of it was taken away by the

church itself, and we thought, in view of Mr. Moore's knowledge and Major Morgan's positive statement, that instead of the troops doing the damage we had even guarded these few vestments that were worthless, and that the claim of the church was not well founded, and we did not allow it.

Mr. HELM. Who filed this claim? I am not interested in the name of the person himself, but—

Colonel HULL. This claim was prepared by the parish priest of Taal and is sworn to by a writer and the principal sacristan of the town. It was prepared by the parish priest and by him forwarded to the archbishop of Manila, and by him turned over to the papal delegate, and was submitted to the board through the department commander in the Philippines.

Mr. OLMSTED. If these claims were to be paid, would the appropriation of this sum of \$363,000 be regulated? Would it be paid to these particular persons in the churches in these towns, or would it be just in one gross payment to the Catholic Church?

Colonel HULL. That matter was very fully discussed by the committee at a couple of its sessions when you were not present. The money would ultimately drift down to these towns, and be spent there.

Mr. OLMSTED. We would deal with the church, itself.

Colonel HULL. Yes, sir.

Mr. OLMSTED. And you say that the \$40,000 for the carrying away of some sacred ornaments, etc., would be how divided among the several churches? How would it be determined what had been taken away from the different churches and conventos?

Colonel HULL. Nobody on earth could determine that. The bishops would have to make an equitable division.

Mr. OLMSTED. This \$363,080.19 which you recommend to be paid of rental and damages, does that cover the whole of the Philippine Islands?

Colonel HULL. Yes, sir.

Mr. OLMSTED. The order on the first page of your report is a little vague. It reads: "To investigate and report upon such claims as may be submitted to it (the board) from these headquarters." I understand that this covers all claims of the kind in the Philippine Islands.

Colonel HULL. Yes, sir; that is my understanding.

Mr. FORNES. In case any other claims should be presented that are not included in this report, would the church still have a standing to make those claims?

Colonel HULL. I suppose that it would have a standing to make them, but this report is intended to cover all the claims.

Mr. PAGE. Does this cover all the claims made up to the time of the rendering of the report?

Colonel HULL. It covers all the claims up to date. Due notice was given, so that any claim presented now would be outlawed. Good faith would not even require an investigation.

Mr. GARRETT. These claims were all forwarded to the archbishop, were they not?

Colonel HULL. No, sir. The archbishop of Manila never saw a great many of them; he only saw the claims from his own diocese.

He has nothing to do with the financial claims of any other diocese than that of Manila.

Mr. PAGE. They were filed, as I understood you, by the papal delegate.

Colonel HULL. Yes, sir.

Mr. GARRETT. What is the relation of the papal delegate?

Mr. PAGE. He is the representative of the Pope, and the one authority over all of the dioceses in the Philippine Islands.

Mr. OLMSTED. He represents the whole church as an entirety.

Colonel HULL. He represents the church as a whole.

Mr. GARRETT. In administrative matters he is the representative. He has a right to act in the name of the Pope. This power is delegated to him by the Vatican.

Mr. GARRETT. The question has been suggested here, and I do not know how extensively it has been gone into, or how extensively there may be a desire to go into it, as to the right of the church to receive this money in a lump sum, and to have it turned over absolutely to the church without Congress undertaking to divide it.

Colonel HULL. I think that that matter has been gone into.

Mr. GARRETT. Mr. Jones stated the other day that all these churches had been paid for by local contributions and that under the organic law all church property is under the control of the Pope as well. Some question might arise as to whether it ought to be turned over to the archbishop or to the church authorities for distribution, or whether Congress ought to undertake to distribute it.

Mr. FORNES. Let me make a statement right there. I have received information in the way of a written statement that whatever money is allowed in this matter will be spent by the church in the Philippines for the purpose of the restoration of the property for which it has been allowed. That statement I can make, and I will also state that as far as the church law goes, every archbishop has full charge of the property of his own diocese, and the title to the property is in the name of the bishop of the diocese.

Mr. DAVIS. Mr. Chairman, I would suggest that if any other member of the committee has no particular claim to request, we have now gone over the question of rentals, damages to churches, conventos, convents, etc., and have particularized to a certain extent for the record. For the benefit of an outsider who may read the report of our hearings—Members of Congress—I would suggest that in order to give a clear idea of the matter, we take claim No. 362, which is like a number of others in the report, and which reads as follows:

No. 362. Tubugan, Iloilo: Claim for damages for looting church and convent, amounting to ₱32,344.

We recommend that nothing be paid, for even if claim was substantiated it was the unlawful acts of the service.

Ought not the record now to disclose some reason, or explain why a claim of that magnitude was rejected, in order that any Member of Congress could pick up the report and ascertain the method and reasons why it was rejected?

The CHAIRMAN. That is a good suggestion. Colonel Hull, why was that?

Colonel HULL. This was hostile territory. It was a town some distance from our regular base of supplies.

Mr. DAVIS. There are a number of other cases of apparently the same nature.

Colonel HULL. Speaking generally and from memory, and from my knowledge of our troops, it would not have been natural for them to have gone in and deliberately carried off the stuff that it is alleged they took. The claim is improbable on its face. Even if substantiated, as the board says, it would be a violation of the principles that have governed the Government heretofore, to fully compensate for that tortious act. To carry off that property, the entire company would have had to be guilty. If any report had been made to the commanding general of such an occurrence anywhere near the time, the case would have been investigated and the officer would have been court-martialed and dismissed and the enlisted men would have been punished and their pay stopped and the church reimbursed for any loss sustained.

Mr. DAVIS. Is there any proof that this looting had taken place?

Colonel HULL. Nothing but affidavits by natives, and you can get those by the dozen of all or any description. Now, that such claims should lie dormant for years and then suddenly be presented after the actors have all passed away to other places, it would not seem that they were worthy of careful consideration or were proper claims.

Mr. DAVIS. That statement would apply to many other claims here in reference to which you have made the same memorandum.

Colonel HULL. Virtually; yes, sir. I am speaking from memory.

Mr. OLMSTED. You recommended that there be nothing paid because there is no such claim substantiated, and even if it had been substantiated it would be an unlawful act of the service. What does that mean?

Colonel HULL. "Servants" there would mean unlawful acts of Government agents. I do not know that we used that word "service" in a single case.

The CHAIRMAN. It should be "servants" there, if anything.

Mr. OLMSTED. You mean then that it would not be the Government, or anybody acting under the authority of the Government, but of individuals acting outside of their employment.

Colonel HULL. Yes, sir.

Mr. OLMSTED. And you mean the same thing, then, as to the succeeding claim, No. 363, when you say, "We recommend that nothing be paid. Even if substantiated it would be an act of war."

Colonel HULL. I think that was a claim for burning. I will look up the exhibits, if you don't mind.

Mr. OLMSTED. There are two or three claims right together there just alike.

Mr. JONES. I would like to ask the Colonel a question or two. I do not know how long these meetings are to continue. There are one or two general questions I want to get into the record.

Colonel HULL. Just a minute, please. I was asked about that Tugbagan claim. I find that we have a report here of Capt. F. D. Wickham, of the Twelfth Infantry, with two affidavits. He says:

There is no evidence that any of the property claimed was taken by United States troops. No troops were ever stationed in the town, and the insurgents were in the place oftener than our forces. Father Felix Gedican, the present priest, is of the opinion that if our troops took anything at all it was taken as loot and that the claim is excessive.

Colonel HULL. Here is his full report:

Report on Roman Catholic Church buildings, etc., used by the Army.

"1. Name the owner, such as:"

(a) The Roman Catholic Church, Tubugan, Panay, P. I.

(b) The ———, religious order.

(c) The ——— Company (Limited).

"2. Use to which the building was applied before American occupation—such as churches, convents, church schoolhouses, bishops' or priests' residences, hacienda buildings, offices, etc."

Church.

"3. General description and size of the structures, whether stone, wood, nipa, etc."

Stone, iron roof. About 250 by 125.

"4. Military use to which property has been applied—such as barracks (stating number of men or companies), hospitals, officers' quarters, storehouses, offices, etc."

None.

"5. Was the building or other property used by the forces of the insurrection at or immediately previous to the occupation by the United States troops?"

No.

"6. Reporting officer to estimate value of rental during period of United States Army use of same, rental value to be based on rents current during period of occupation and use. If boards of officers have already reported on question of rent, refer to same, where, when, and by whom forwarded."

None.

"7. Has demand or request ever been made for rent by church authorities, or to vacate the premises? If so, refer to papers, by whom, when, and where forwarded."

No.

"8. Dates between which the Army occupied the structures from American occupation to March 1, 1903."

Never occupied.

"9. Have provincial or municipal authorities officially or verbally claimed that these buildings are public and not church property? Forward or refer to papers, if any."

No.

"10. Have any such buildings occupied by the Army been injured wantonly or accidentally, or have they been improved and repaired by the Army? Give all facts and amounts."

No.

There is no evidence that any of the property claimed was taken by United States troops. No troops were ever stationed in the town and the insurgents were in the place oftener than our forces. Father Felix Gedican, the present priest, is of the opinion that if our troops took anything at all it was taken as loot and that the claim is excessive.

See affidavits attached and marked "A" and "B," respectively. Notice two affidavits by Vincente Tacsagon.

(NOTE.—All buildings at any one post or station to be covered by one report, if practicable.)

Place, Tubugan, Panay, P. I.

Date, December 21, 1905.

F. D. WICKHAM,
Captain, Twelfth Infantry.

Colonel HULL. That is case 362. Now, as to 363.

Mr. OLMSTED. There seems to be two parts of that: First, that the claim is not substantiated; and second, even if substantiated, it would be an act of war.

Colonel HULL. In his report, Captain Wickham states:

At present the building is in a very poor state of repair and no care taken of it. There is no positive evidence that anything was taken from this church by United States troops, or that it was ever burned by them. The people when questioned say they do not know whether it was the insurgent force or the United States force which did the damage as they were all very much frightened

at the time, and left the town, and that the two men who made the affidavits setting forth the damage were not in the town at the time, either.

The full report reads:

Report on Roman Catholic Church buildings, etc., used by the Army.

"1. Name the owner, such as:"

(a) The Roman Catholic Church, Calinog, Panay, P. I.

(b) The ———, religious order.

(c) The ——— Co. (Limited).

"2. Use to which the building was applied before American occupation—such as churches, convents, church school houses, bishops' or priests' residences, hacienda buildings, offices, etc."

Church.

"3. General description and size of the structures, whether stone, wood, nipa, etc."

Stone, with iron roof.

"4. Military use to which property has been applied—such as barracks (stating number of men or companies), hospitals, officers' quarters, storehouses, offices, etc."

None.

"5. Was the building or other property used by the forces of the insurrection at or immediately previous to the occupation by the United States troops?"

Yes.

"6. Reporting officer to estimate value of rental during period of United States Army use of same, rental value to be based on rents current during period of occupation and use. If boards of officers have already reported on question of rent, refer to same; where, when, and by whom forwarded."

None.

"7. Has demand or request ever been made for rent by church authorities, or to vacate the premises? If so, refer to papers, by whom, when, and where forwarded."

No.

"8. Dates between which the Army occupied the structures from American occupation to March 1, 1903."

Never occupied.

"9. Have provincial or municipal authorities officially or verbally claimed that these buildings are public and not church property? Forward or refer to papers, if any."

No.

"10. Have any such buildings occupied by the Army been injured, wantonly or accidentally, or have they been improved and repaired by the Army? Give all facts and amounts."

No repairs.

At present the building is in a very poor state of repair and no care taken of it. There is no positive evidence that anything was taken from this church by United States troops, or that it was ever burned by them. The people when questioned say they do not know whether it was the insurgent force or the United States force which did the damage, as they were all very much frightened at the time and left the town, and that the two men who made the affidavits setting forth the damage were not in the town at the time, either.

(NOTE.—All buildings at any one post or station to be covered by one report, if practicable.)

Place, Calinog, Panay, P. I.

Date, December 16, 1905.

F. D. WICKHAM,
Captain, Twelfth Infantry.

Mr. OLMSTED. I want to get your meaning of that second defense, as to acts of war, which applies to a great many of the claims.

Colonel HULL. That is explained in the back of our report.

Mr. JONES. Were there any other cases in which you discovered upon investigation that the troops who were alleged to have committed the damages were not even in the town when the alleged damages were committed, or is this the only case?

Colonel HULL. There were a number of cases where they showed ignorance or misconception in their affidavits. A study of the affidavits does not lead one to any great belief in the correctness of the native testimony. I have had experience with that in other matters.

Mr. GRAHAM. As I understand you, this damage was probably done by the insurgents.

Colonel HULL. Whether it was done by insurgents or United States troops we do not know.

Mr. DAVIS. Possibly the looting was done by the owners themselves, who kept the sacred vestments in hiding.

Colonel HULL. That was one of the cases.

Mr. JONES. You mean to say that the looting was done in many cases by the owners, very probably?

Colonel HULL. In cases, people of the town went into the churches and hid the ornaments and vestments, some from religious motives and some from opposite motives.

The CHAIRMAN. That was in the reports of the Regular Army officers.

Take claim No. 374, which is a claim for rent and damages to convent amounting to 5,875 pesos. You recommend payment of rent for three months at 25 pesos per month, amounting to 75 pesos altogether, and no damages. There the claim was for \$2,900, and you gave them \$37.50. Is that a remarkable one?

Mr. JONES. What is the number of that claim, Mr. Chairman?

The CHAIRMAN. No. 374.

Mr. OLMSTED. At the bottom of page 30.

Colonel HULL. That happened in some cases where buildings had been burned when we occupied them. This investigation was made at my suggestion by Capt. Clarence S. Nettles, acting judge-advocate, Department of Visaya, who went there and took testimony on the subject. He was authorized to administer oaths. His report is as follows:

Report on Roman Catholic Church buildings, etc., used by the Army.

"1. Name the owner, such as:"

- (a) The Roman Catholic Church.
- (b) The ———, religious order.
- (c) The ——— Co. (Limited.)

"2. Use to which the building was applied before American occupation—such as churches, convents, church schoolhouses, bishops' or priests' residences, hacienda buildings, offices, etc."

Church used for religious purposes and convent as priest's residence up to date of insurrection, November, 1898, when priest fled. Afterwards occupied by insurgent troops.

"3. General description and size of the structures, whether stone, wood, nipa, etc."

The church was about 100 by 50 feet; walls of sawalle, roof of nipa; now entirely destroyed, apparently from decay consequent to nonuse, neglect, and natural causes. Convent a small building of four rooms, also of light structure and nipa roof. In complete state of decay, due to nonuse and natural causes.

"4. Military use to which property has been applied—such as barracks (stating number of men or companies), hospitals, officers' quarters, storehouses, offices, etc."

As barracks for small detachment of about 30 men.

"5. Was the building or other property used by the forces of the insurrection at or immediately previous to the occupation by the United States troops?"

No evidence.

"6. Reporting officer to estimate value of rental during period of United States use of same, rental value to be based on rents current during period of occupation and use. If boards of officers have already reported on question of rent, refer to same; where, when, and by whom forwarded."

Ten dollars gold per month.

"7. Has demand or request ever been made for rent by church authorities, or to vacate the premises? If so, refer to papers; by whom, when, and where forwarded."

Not known.

"8. Dates between which the Army occupied the structures from American occupation to March 1, 1903."

About three months.

"9. Have provincial or municipal authorities officially or verbally claimed that these buildings are public and not church property? Forward or refer to papers, if any."

Not known to have. As stated, the buildings are at present unfit for any use whatever.

"10. Have any such buildings occupied by the Army been injured wantonly or accidentally, or have they been improved and repaired by the Army? Give all facts and amounts."

There is no evidence of wanton or accidental injury. It is my opinion that these buildings have simply rotted away, due to natural causes, climate, etc., and lack of care and nonuse.

(NOTE.—All buildings at any one post or station to be covered by one report, if practicable.)

Place, La Castellana, Occidental Negros.

Date, September 23, 1905.

CLARENCE S. NETTLES,

Captain, Acting Judge-Advocate, U. S. Army.

Mr. JONES. You recommend the payment of rent at 25 pesos per month, which is really more than the amount recommended by the Army officer in this instance.

Colonel HULL. We allowed a little more than the evidence in front of us would warrant.

Mr. JONES. I want to ask you a general question or two. Generally speaking, I understand that the property for which rent and damages is claimed is of three characters—first, cathedrals; second, churches and conventos, and, third, seminaries or school buildings. Now, I understand from your reports here that these cathedrals were built by contributions of one-third by the members of the church, one-third out of the general island treasury, and one-third out of the local funds. Will you please state how the conventos were built?

Colonel HULL. They were built in a great many different ways. In a great many towns it is reported that they were built by the labor of the people of the town and contributions from the wealthy people in the town. In other cases the government gave funds, and in still other cases the church gave money from the church funds, but as to any fixed rule it would be impossible to state.

Mr. JONES. There were no uniform means by which they were built?

Colonel HULL. No, sir; according to my understanding.

Mr. JONES. How about the seminaries and the school property?

Colonel HULL. I think they were generally built out of the funds of the diocese, aided by contributions and labor of the people.

Mr. JONES. What do you mean by "funds of the diocese?" Do you mean local funds or particular church funds?

Colonel HULL. Funds of the diocese—church funds.

Mr. JONES. There was a case, you know, taken to the supreme court, which probably was supposed to be a typical case. Do you know whether the property involved in that particular test case—alleged test case—was a cathedral, or whether it was a church and a convent, or whether it was school property?

Colonel HULL. My recollection is that it was a church and convent, constructed one-third out of the central treasury and the rest by voluntary contributions. I speak from memory. You have the case in front of you, I think.

Mr. JONES. No; I do not have it in front of me.

Colonel HULL. It is before the committee, is it not, Mr. Chairman?

The CHAIRMAN. Yes; we have a report here. It came after we adjourned last spring.

Mr. JONES. Do you think it possible that you could take any one case, or even a class of cases there, as I have discovered them, and make a test case of that one case which would rule all of the other cases?

The CHAIRMAN. Permit me to suggest that the supreme court has decided that the title is in the church.

Mr. JONES. That was in the case that was before the supreme court, but there was but one case before the supreme court, and that is what I am trying to get at. They decide that the property involved in that suit belonged to the church, and it is alleged, or claimed, I suppose, that that is a test case. Now, I have discovered in these hearings that the cathedrals, for instance, were built one-third out of funds contributed by the general government (the insular government), one-third by local funds (taxes set apart for local purposes), and only one-third, and the other third by private contributions. That is not the case with a great deal of the other property in the islands for which we are asked to pay damages. The question with me is whether it would be possible to pick out any one of these cases—any one of this class of cases—and then show that the decision in that case would cover all other cases, no matter how different the ownership might be. That is what I want to get the opinion of Colonel Hull on. He was judge-advocate over there, and he made the examination as to the ownership of title, as well as to the character of the damages to this property.

Colonel HULL. It is a question of practice. Doubtless, a good many members of the committee have had more experience in such matters than I have.

Mr. MCKINLAY. Does not that decision go to the point that always, in reference to the organized church, the legal title lies in the bishop of the diocese? That is the old canonical law.

Mr. JONES. That whole question is discussed in this one case.

Mr. MCKINLAY. I think that the decision of the supreme court of the islands covers that point. They have held that the title to the church property always lies in the bishop.

Mr. DAVIS. No matter who built it.

Mr. MCKINLAY. There has got to be a legal title somewhere.

Mr. JONES. I do not want to discuss this subject in the committee now. We will discuss it when we take the matter up for discussion. I want to get at the facts now. You may be right about that. I am

not discussing the decision of the supreme court. What I want to get at is the facts as to the ownership of this property, so that when we come to consider this question we will be able to determine whether or not that was a test case, and that the rule laid down in that case should govern in all other cases where damages are claimed.

Mr. OLMSTED. Let me ask you this, Mr. Jones: The buildings were paid for one-third by the Philippine government, one-third by the church, and one-third by local funds. I do not understand what is meant by "local funds."

Mr. JONES. I understand "local funds" to be a part of the local taxes contributed or set apart by the general government for local purposes.

Mr. MCKINLAY. And individual contributions.

The CHAIRMAN. Gentlemen, here is an important point. Colonel Hull used the words "Philippine government." We want it to be distinctly understood that the Philippine government as now constituted did not contribute to the church. It was the Spanish Government, not the Philippine government, which contributed.

Mr. JONES. I said out of the general insular government.

Mr. MCKINLAY. Would it not be a pretty fair presumption that when the supreme court of the islands had taken a case which, presumably, was a test case and applied to the title to the church property that would apply to all of the cases? Can we not take that as a fair presumption?

Mr. JONES. I am anxious to get at the facts, so as to decide that. What would be the use of getting Colonel Hull's opinion on these items if we are going to decide the title in each particular case by the facts in the case.

The CHAIRMAN. There is one question that I want to ask Colonel Hull. Have you talked with the church authorities over there on the general subject of limiting the purposes for which the appropriation, if made, should be expended?

Colonel HULL. I have never discussed any such question with them, other than that everyone of the authorities have assured me that if any money were appropriated, it would be used in rebuilding and reconstruction of the church properties in the Philippine Islands.

The CHAIRMAN. Is it your judgment that it would be wise for us to insert in the appropriation bill, if one be passed, a provision directing that the money appropriated shall be used for building purposes in the Philippine Archipelago—shall be expended in the islands?

Colonel HULL. That is a question that really is not before me, but, at the same time, I feel that any such provision as that would do no harm. In view of the statements that the Catholic authorities have made to me, I think that there would be no objection on their part to such a limitation.

(At this point the committee adjourned until 10.30 o'clock a. m. of to-morrow, Thursday, January 23, 1908.)

COMMITTEE ON INSULAR AFFAIRS,
HOUSE OF REPRESENTATIVES,
Thursday, January 23, 1908.

The committee met at 10.30 o'clock a. m., Hon. Henry Allen Cooper, chairman, presiding.

STATEMENT OF LIEUT. COL. JOHN A. HULL, U. S. ARMY—Continued.

The CHAIRMAN. The committee will come to order. Is there any member of the committee who desires to further question Colonel Hull about any of the claims?

Mr. FORNES. I desire to ask Colonel Hull where these claims were made and not recognized, were they generally made under the assumption that whether our troops had occupied or in any way made use of the property, they believed that the Government was responsible? Was there such an impression prevailing?

Colonel HULL. No; I do not think there was, for the reason that during Spanish times, and during the insurrection of 1896 and 1898, many of these buildings had been occupied by either the insurgents or the Spanish forces, and no claims had been made against Spain for such occupancy or for such losses, and I should say that the general impression among the natives was that that was something for which there was no responsibility.

Mr. FORNES. They may have made the claims in the belief that there was now a responsible party against which to make the claims.

Colonel HULL. That is speculative to a certain degree.

Mr. JONES. Colonel Hull, I want to ask you one or two rather general questions.

Are there any claims which were investigated by your board where the church authorities were unable to give you definite facts relating to the damages claimed by reason of the fact that the Aglipayans were in possession of the churches all the time and they therefore could not furnish you that?

Colonel HULL. That was true in a number of provinces. In Bishop Daugherty's diocese, in the northern part of Luzon, there were several provinces so held, and he claimed that the church suffered quite a loss in the award, due to such conditions, as the church was thereby unable to make proper presentation of their claims.

Mr. JONES. Do you know of any cases of damage to church property, or destruction of church property, where this property was built wholly by contributions from the people?

Colonel HULL. Any such specific cases I can not call to mind at present, but I have no doubt that there were such cases.

Mr. JONES. In any of these cases were the representatives of the Independent Catholic Church in possession of the property when you made your investigation?

Colonel HULL. You mean in these cases?

Mr. JONES. Yes; in any of the cases enumerated in your report, in any of the churches named in your report.

Colonel HULL. Yes; in a number of the cases mentioned in our report the actual possession of the buildings at the time we were investigating the claims was in the hands of the Aglipayans.

Mr. JONES. Had that possession been continuously in their hands since the insurrection?

Colonel HULL. As I think I stated on the first day that I appeared before this committee, we paid no attention to the Aglipayan order in the investigations that we made as to whether they were in possession of the property or not. In other words, the exact ownership of this property was not made the subject of close inquiry.

Mr. JONES. You did not then, I understand, investigate as to how long either branch of the church had been in possession of the property, but you do know that the Aglipayans, or the Independent Catholic Church, was in possession of some of this property at the time you made your investigations.

Colonel HULL. In a large number of cases.

The CHAIRMAN. Is that all, Mr. Jones?

Mr. JONES. That is all I wanted to ask the colonel.

Colonel HULL. That information, I might state, was obtained by the board not only from the statements of the Catholic authorities, but it also appeared in some cases in the reports of the army officers submitted to the board.

The CHAIRMAN. Let us have a distinct understanding as to what was meant by the Independent Catholic Church in the Philippines. When was that church first heard of there?

Colonel HULL. Along about the latter part of the summer, or in the early fall of the year 1902.

The CHAIRMAN. That was after our occupancy of the islands?

Colonel HULL. Yes, sir.

The CHAIRMAN. Who was Aglipay?

Colonel HULL. He was a sort of vicar-general, at one time, of the diocese of Vigan, under the Roman Catholic Church.

The CHAIRMAN. That was prior to the war, and before our occupancy?

Colonel HULL. It was after our occupancy—say, August, 1898, to March, 1899. The insurgents seized the bishop of Vigan and carried him to the mountains, and he subsequently died of hardships that were placed upon him by the insurgents.

The CHAIRMAN. The bishop of Vigan of the Catholic Church?

Colonel HULL. Yes, sir.

The CHAIRMAN. Not of the Independent Church?

Colonel HULL. No, no; that was before the Independent Church had started. Then Aglipay joined the insurrection as a general of the insurrectionary forces, and he had the reputation among the Americans of being a very bloodthirsty individual. He surrendered, finally, to the American authorities, and shortly afterwards started the so-called Independent Catholic Church.

The CHAIRMAN. And this man, who had the reputation of being a bloodthirsty individual, was the head of the Independent Catholic Church in the Philippine Islands?

Colonel HULL. Yes, sir. I might add that it was frequently reported that he was guilty of burying American soldiers alive if they fell into his hands as captives.

The CHAIRMAN. Now, the possession of these churches by the Independent Catholic Church, at the head of which was Aglipay—this man who had the reputation of burying our soldiers alive—was what

sort of possession? Was it by force; was it with the consent of the Catholic Church; was it with the consent of the American Government, or was it with the consent of any constituted authorities?

Colonel HULL. It was not with the consent of the Catholic Church; neither was it with the direct consent of the American Government.

The CHAIRMAN. Are there any other questions, gentlemen?

Mr. JONES. I would like to ask a question right there. Colonel Hull, is it not a fact that Secretary Taft, when he was governor of the Philippine Islands, issued an order that wherever the Aglipayans were in possession of church property they should remain in possession of that property, and that wherever representatives of the Roman Catholic Church were in possession they should remain in possession of the church property, quiet possession, until the dispute between the two elements should be decided by the courts?

Colonel HULL. I have never read such instructions, but it is my impression that such were issued, especially in view of the policy pursued by the Government.

Mr. JONES. There is no question on earth but that such an order was issued; and, if it were issued, were not the Aglipayans in lawful possession of this property under that order, if they were in possession of it?

Colonel HULL. My answer to that was, a short time ago, that it was with the passive consent of the government that they took possession.

Mr. JONES. Yes; but I was afraid that your answer and the chairman's question there might—

Colonel HULL. As I understand the policy of the government out there, this was a question that was properly one for the courts; that the authorities would not consider it as an administrative measure and place one or the other in possession of the churches. They would leave them as they found them.

Mr. JONES. I know that Secretary Taft testified about that himself last winter. I have a copy of his testimony here. There is no question on earth—

The CHAIRMAN. Suppose we were to grant that, my question was this—

Mr. JONES. I was afraid that it would convey an improper impression.

Mr. FORNES. In the calculation of these claims, did the question of the possession of this property by the Independent Catholic Church have any effect as to the result in arriving at the amount allowed?

Colonel HULL. No such question was considered by the board on church claims, and the question does not figure in the report that we are now discussing.

Mr. HELM. There must have been some conflict of claims between the regular church and this independent church. Now, in some States and under some jurisdictions, if that possession was adverse to the legal title of the holder and continued adverse—at least, in our State—for fifteen years, then the person claiming adverse possession and in adverse possession for fifteen years acquires title. Does that condition prevail anywhere along the line in any of these claims?

Colonel HULL. No, sir; ten years' hostile possession is the law in the Philippines now.

Mr. OLMSTED. You mean that ten years gives a prima facie title.

Colonel HULL. Yes, under Act No. 190 of the Philippine Commission.

Mr. HELM. Has any of this property which is included in that upon which the award of the board was made been in the possession of this Independent Catholic Church for ten years or longer?

Colonel HULL. That would be impossible, because the Independent Church was not constituted until 1902.

The CHAIRMAN. Are there any other questions, gentlemen, on any other claim?

Mr. GARRETT. I want to ask Colonel Hull this question in view of the answer just given by him. At the time for which you made these awards, was there any Independent Church there?

Colonel HULL. No, sir.

Mr. GARRETT. There was no Independent Church for the time that you made these awards?

Colonel HULL. No, sir.

Mr. GARRETT. The organization of the Independent Church has all come since the time of our occupancy for which these awards were made?

Colonel HULL. Yes, sir; unless in one or two particular cases, where we have kept scouts; but as a very general proposition, I should say that it was afterwards.

The CHAIRMAN. During the time that these damages were inflicted, there was no Independent Catholic Church in the Philippines?

Colonel HULL. No, sir.

Mr. HELM. Perhaps it is a little bit apart from the Colonel's office, but it occurs to me, and I would like to ask him if it would be possible out of abundant precautions that there would be an award made, that a case could be prepared and presented to this Manila court, or to whatever court prevails over there, and have it adjudicated thoroughly and completely as to whom this money should be paid? Could that be done? Would it be possible?

Colonel HULL. For what purpose? What claims are you afraid of?

Mr. HELM. There seems to have been some confusion or some misunderstanding as to who was the proper person in each instance to whom to pay this money. Could that not be all adjudicated or determined conclusively by the court in a certain case?

Colonel HULL. It could be determined conclusively by the War Department, without the necessity of an investigation by judicial process, by securing any necessary quittance of every legal authority of the Catholic Church.

The CHAIRMAN. I think that I can ask a question which will clear up part of the doubt in your mind, Mr. Helm. Let me ask the Colonel this: Has the Independent Catholic Church ever presented a demand for damages to any property mentioned in any of these claims?

Colonel HULL. No, sir; and there is a document on record, secured from Aglipay by an officer whose name I do not now recall, stating that no such claims were contemplated.

The CHAIRMAN. That being true, the only claimant who has asked compensation for damages on the property mentioned in your itemized report is the Roman Catholic Church of the Philippine Islands?

Colonel HULL. Yes, sir; of which there are only five owners—the bishops.

Mr. GARRETT. On the first day of the hearings I asked Colonel Hull two or three questions, the substance of which, all taken together, was whether the board had not allowed what it considered to be a reason-

able rental or reasonable payment for actual use by troops of the United States acting under orders. Now, do I understand you to say that the Independent Church was not organized prior to 1902?

Colonel HULL. That is my understanding.

Mr. GARRETT. It was organized in that year?

Colonel HULL. Yes, sir.

Mr. GARRETT. Now, the great bulk of the claims which are made, and which are involved in your report, were claims for occupancy prior to 1902, when there was no schism in the church. Is that correct?

Colonel HULL. Yes, sir.

The CHAIRMAN. And no independent church.

Mr. GARRETT. No Independent Church.

Colonel HULL. That is correct.

Mr. GARRETT. I understand, from what you said a few moments ago, that probably there were some few claims subsequent to 1902.

Colonel HULL. I will explain that—

Mr. GARRETT. Just a moment. If that is correct and there are some claims subsequent to that, will you at your leisure designate those claims and put them into the report of the hearing here, in the statement here?

Colonel HULL. That would be very hard to do. They will be only a few in number where the occupancy extended for any length of time after the schism. Most of the occupancy—I should say in 99 per cent of the claims—occurred before this division. Where we occupied the property later than that, it was due to the maintenance of scouts, or something like that. I can do it, but it would involve some time and a good deal of work.

Mr. DAVIS. Mr. Chairman.

The CHAIRMAN. Mr. Davis.

Mr. DAVIS. Of what is the Independent Church composed?

Colonel HULL. Of what elements?

Mr. DAVIS. Of what population; what peoples?

Colonel HULL. Ilocanos, Visayans, and Tagalogs.

Mr. DAVIS. With regard to religious faith?

Colonel HULL. All Catholics.

Mr. DAVIS. Is it true, or not, that the Independent Catholic Church is composed of deserters, as it were, or offshoots of the previously existing Catholic churches?

Colonel HULL. Yes, sir.

Mr. GRAHAM. What number? You indicated some time ago, I think, the probable number of them.

Colonel HULL. No, sir; I did not. Mr. Jones stated 3,000,000, but I have no figures. I should say that that estimate is large.

Mr. DAVIS. Then the members, generally speaking, of the present Independent Catholic Church were formerly members of, and belonged to, the Roman Catholic Church.

Colonel HULL. Yes, sir. That question is discussed somewhat in the statement of Bishop Daugherty. I have not read that statement in over a year, but I think that he discussed the Independent Church in his affidavit made to the board.

Mr. DAVIS. The reasons for this dissension, or breaking away from the so-called "mother-church," was not considered important by your board?

Colonel HULL. No, sir.

Mr. DAVIS. Of no account whatever?

Colonel HULL. Not from what I understand of our report.

Mr. DAVIS. Except you did ascertain the manner and method, and the funds that were used in the construction of these churches?

Colonel HULL. In some cases, but not in all cases.

Mr. DAVIS. And you have stated the sources of revenue?

Colonel HULL. I looked up that question somewhat when I was first in Manila.

The CHAIRMAN. There is one suggestion that I want to make right there, Colonel. We have here a record of the testimony of the four bishops taken under oath before this board. I have been given permission to insert in the record of the hearings before this committee the testimony of Bishop Rooker, and I think it would be well to have also inserted in such record the sworn testimony of Bishop Daugherty, of Bishop Hendrick, and of Bishop Barlin—the three American bishops and the one Filipino bishop—on these claims.

Mr. JONES. Are those all the bishops?

Colonel HULL. Yes, sir. The Archbishop of Manila was absent.

The CHAIRMAN. Is the committee willing to have that done?

Mr. JONES. I hope that it will be done.

CONVENTO, JARO, ILOILO, *December 5, 1906.*

Statement of Right Rev. Frederick Z. Rooker, bishop of Jaro, after first being duly sworn by the president:

Q. Bishop, when did you first come to Jaro?—A. I came to Jaro on the 2d of November, 1903.

Q. In the performance of your ecclesiastical duties you made visitations to most of your diocese?—A. Of fully two-thirds.

Q. I would like to have a statement from you as to what you learned on these visitations relative to the inquiries we are now making pursuant to orders from the Secretary of War; that is, with special reference to damages done to the Roman Catholic Church by insurgents or incident to war.—A. Well, I found in many of the parishes, first, that the American troops occupied and used church property consisting of residences and church buildings, and that such occupation caused to these buildings more than the damage by ordinary wear and tear. I found in very many places that the buildings were left by the troops in practically useless condition, and in very many other cases they were left in such a state that their further occupation for purpose of residence would necessitate repairs at great expense. I found that in some few cases the property, consisting of churches and convents, was totally destroyed by fire, ordered by American officers. I found that the general impression caused among the people was that enormous quantities of property, furniture, utensils, instruments, and vestments of worship were appropriated by the American troops. Whether or not this was what actually happened I can not tell, for I was not even present in the Philippine Islands, but the general impression is that such sacking took place. As to the value of these damages to church property I am in no position to give a better estimate than those that have already been presented in separate documents sworn to by witnesses present during the whole time. That the churches and ecclesiastical buildings were at one time of extraordinary value and beauty is evident from an inspection of what is left of them. That they are now in a miserable state of deterioration is also perfectly evident to the eye. That this deterioration has been caused by violent treatment and not by ordinary effects of time and weather and to lack of care is also perfectly evident. That the only violent cause which operated between the time the buildings were in a totally excellent condition and the time when they were found almost completely ruined was the prosecution of war is also an historical fact. Consequently I suppose the incident of the prosecution of war, the operations of the American troops, and possibly at the same time malicious destruction by the insurgents were the causes of the destruction. It is also absolutely sure that objects of very great value have been lost, and were lost during the time of the disturbance; that some of these

objects might be traced so that proof could be found of their possession by the American troops is certain—to calculate exactly how much the American troops directly confiscated of such property is simply an impossibility. I believe, however, that if the American Government desires to make compensation for the damages actually suffered by the Catholic Church in its property, during and directly on account of the insurrection and its suppression, the estimates already presented from this diocese will give the Government a fair and honest valuation upon which to base its compensation.

I desire, however, to add to the claims already submitted one claim for ₱16,000 damage on account of the burning of the church and convento in the pueblo of Tangalan, province of Capiz, which destruction took place when the American official in charge ordered the burning of the entire pueblo. This claim was submitted, but was not accepted, because at that time it was understood that no claim for damage on account of necessary operation of war was to be admitted. I may say that I have visited personally the pueblo of Tangalan, and I know that the church and convento were actually burned; that I have been informed by residents of the town who were there at the time, as well as by American military officers, that this pueblo was burned by order of the commanding officer. I will also add that the value of ₱16,000 for the church and convento as they existed is absolutely reasonable, being a value based on the expense of constructing both buildings at the time of their destruction, which expense at the present date would be largely increased.

I know of no instance in the entire diocese where the property damaged by military occupation or by the incidents of war has been repaired or restored. The economic condition of the people absolutely prevents them from contributing toward such reparation or restoration. They have been obliged to continue in their worship in burned churches as best they might, and the parish priests have been obliged to live as best they can in their practically destroyed conventos or to hire a room in small, contiguous houses.

Even if the Government were to grant the claims of this diocese just as they stand, the condition of the church here would still remain very much deteriorated in comparison with what it was before the war. The sums asked for would be insufficient to put the property back to its original condition. These amounts are calculated on the basis of damages actually done. Since then, as time has passed, the deterioration to the damaged buildings has increased month by month. This subsequent deterioration has not been included in the claims which have been presented. The repairs to-day would be much more than at time of damage. For example, if the claim made for damages in the parish of Maasin (case 369), amounting to ₱2,000, had been paid at the time they were made the amount would have restored the property to its original condition; to-day that restoration would cost not less than ₱10,000.

Q. Recently you caused contractors to look over the bishop's palace at Jaro?—

A. I have.

Q. Did you have any estimates made as to the cost of repairs?—A. I had four estimates made.

Q. Will you state what they were?—A. The estimates ranged from ₱25,000 to ₱30,000.

BISHOP'S PALACE, VIGAN, LUZON,
December 21, 1906.

Statement of Right Rev. D. J. Daugherty, bishop of Vigan, after first being duly sworn by the president:

Q. Bishop, when did you first come to Vigan?—A. I arrived in Vigan October 22, 1903.

Q. In the performance of your ecclesiastical duties you made visitations to most of your diocese?—A. All except Nueva Viscaya and a few towns in Ilocos Norte.

Q. I would like to have a statement from you as to what you learned on these visitations relative to the inquiries we are now making pursuant to the orders from the Secretary of War; that is, with special reference to damage done to the Roman Catholic Church by insurgents or incident to war.—A. I learned that not only the direct damages considered, but the resultant damages are great. Formerly the church buildings were in a fine condition and one of the glories of the land; now they soon will be complete ruins unless repaired at once, and as the parishes have no church funds there is an urgent necessity for a speedy appropriation by Congress to meet the just claims of the churches. I consider that the claims heretofore presented and those newly presented are not at all more than is just. In fact I know many instances where priests

abstained from presenting large claims for fear that Congress would reject all. In the entire province of Ilocos Norte, where we have many church properties of great value, there is only one town in which we have a priest and from which we have received a priest's report. For the other towns we have been obliged to call upon the actual, provincial treasurer in 1904, and the report he made gave an estimate of properties of about one-fifth what we considered just with regard to the rentals. The treasurer had no documents which to rely upon in making his report. In the entire province of Nueva Viscaya there was no Catholic priest at all, and we had to rely upon the local provincial treasurer to make a report, and in the foregoing we deem the estimate of the damages done less than we consider just. In several towns in far outlying parish districts, especially in the mountainous countries, we have no priests at present, and we are therefore unable to obtain reports. It is impossible for us to estimate the indirect loss caused by damages, whether necessary or wanton, by the soldiers. By this indirect loss I mean whatever damages have been caused by the excessive rains and the terrific hurricanes of this climate, which had an opportunity for destruction by the removal of doors, windows, and by injury to roof and other parts of buildings. Furthermore, we have not reported any loss accruing to us from the fact that our religious services were suspended more or less by occupation of the buildings by United States troops, thereby curtailing the usual income of the parishes. And further loss might be estimated in the impossibility of replacing, in many instances, what has been destroyed, at least without extraordinary expense, on account of the changed condition of affairs, and particularly on account of the advance in values, we can never expect to obtain first-class materials such as we obtained formerly, at least without quadrupling the former prices. In many instances our claims were either rejected or reduced because we were unable to specify the particular purpose or use by the soldiers of the materials destroyed. It is not necessary to remark that wanton damages were not allowed. I believe that without our buildings we will be unable to sustain religion, and that accordingly we will not be able to perform the services for the state that we desire and that we hope to perform. We believe that the Catholic Church here, taking into consideration the past history and traditions of the Filipino people, can be of great assistance to the United States Government in furthering peace, prosperity, material progress, and education in this archipelago. More than two-thirds of the people are Roman Catholics, and as far as human discernment will allow one to judge, they will probably remain attached to the Catholic Church. Accordingly the American bishops in the Philippine Islands who were appointed by the Holy See at the request of the United States Government, feel that it is their duty to work hand in hand with the Government for the betterment of the people, and they hope the Government, on its part, will do all it can in all justice to meet the reclamations of the church for damages caused since American occupation. With regard to this particular diocese over which I preside, it has been the scene of many military operations, and has also suffered more than any other diocese by the aggressiveness of the so-called Aglipay or revolutionary power, and the bishop feels that in so far as he will be able to counteract and overcome the tendencies of this anti-American party he will be subserving the interest of the United States as much as that of the church. For, if the Aglipayans have gone into open schism and are fighting the church it is because the church stands for the only constituted authority in these islands. This diocese of Nueva Segovia has no diocesan fund and no sort of revenue whatsoever beyond the mere pittance that accrues to it from church administration, and the poverty of the people is at present so appalling that we can expect no help from them as they were never accustomed, as in the United States, to contribute direct to the church.

It is needless to say that whatever Congress may appropriate to meet these claims shall be expended upon Philippine edifices and Filipino labor, and will contribute to alleviate the prevailing distress of this country.

BISHOP'S PALACE, CEBU,
December 8, 1906.

Statement of Right Rev. Thomas A. Hendrick, bishop of Cebu, after first being duly sworn by the president:

Q. Bishop, when did you first come to Cebu?—A. March 12, 1904.

Q. In the performance of your ecclesiastical duties have you made visitations to all your diocese?—A. About nine-tenths.

Q. I would like to have a statement from you as to what you learned on these visitations relative to the inquiries we are now making pursuant to orders from the Secretary of War, that is with special reference to damages done to the Roman Catholic Church by insurgents or incident to war.—A. I will say that I have talked with, I think, nearly every rector in this diocese concerning these matters, and with many of the principal men in each pueblo where loss was suffered, also with Americans who took part in military service, either as officers or as privates, and my judgments are based on these interviews. In general, this diocese was the most peaceful part of the islands, as the natives, Visayans, are by nature the most peaceful of all the different kinds of Filipinos, and besides were on the best relations with their civil and ecclesiastical superiors. The diocese is the largest in point of population of all in the islands, containing about 1,930,000 Catholics. Cebu Province is the most densely populated, containing about 700,000 souls, next in order coming Leyte, Samar, the provinces of Bohol, Surigao, and Misamis, the latter two being in northern Mindanao.

Some damages were done in Mindanao, Bohol, and Cebu, but relatively speaking less than in Leyte, and much less than in Samar, which was almost completely destroyed during the war and the disturbances that followed up to the present time.

The churches of the diocese were, at the time of American occupation of three kinds, first, solid stone, large and beautiful churches; second, part stone and part wood; or third, stone foundations with wood timbers and bamboo plastered walls, called pampangas.

The greatest loss we suffered was in one church in Hilongos, Leyte. This was a fortified church, so made as a place of refuge against the forays of the Moros. The American troops after occupying this magnificent church and property for two months, and the convento, without molestation, set it on fire, and it and the convento were burned, together with the whole town, before the Americans marched out. This was done by a battalion of volunteers, I believe from Tennessee, and I also believe by order of their officers, the latter believing, I suppose, that the property might be used as a fort by the insurgents. All the better class of churches, such as this, were exceedingly rich in silver and gold plate, amounting in value to perhaps one-half of the value of the building. This church, in particular, was rich in silver altars, candelabra torches, water stoups, and rich vestments, all of which disappeared with the American troops. A few gold chalices and other vessels were carried into the mountains on the approach of the American troops. About two-thirds of the parish churches were of this stone construction. A beautiful stone church was destroyed by the Americans in Borongan, Samar, and in other places, which are particularly mentioned in our claims.

As regards loot, let me say about the silver altars that nearly every parish church contained at least one, the altar, reredos, and upper construction being covered with silver plate about one-sixteenth to one thirty-second of an inch in thickness. These altars were from 10 to 20 feet high. The candlesticks, water stoups, torches, and other furniture being of solid silver. The chalices and other altar furniture were mostly of solid silver, in a small proportion, say 10 per cent in value, of solid gold. There were besides large silver sanctuary lamps, silver altar cards, and silver frames for altar cards. Great quantities of these valuables disappeared with the American troops. In a majority of the churches of the diocese there was no priest in charge, owing to the departure of the friars, and for other reasons, at the time of the occupation by the American troops. The American troops often occupied these churches as barracks, and this leads to the inference that they took the missing property. This is confirmed by the statement of American officers to me, that they had discovered such thefts, and, of course, enforced restitution. I wish to say here that the American officers, I may say almost without exception, did well in protecting Catholic Church property, and, in general, I lay no blame to them. Where the priest was present during the occupation, I find no losses.

Samar comes in a class by itself. In general the Insurrectos respected church property, excepting that they levied on the moneys of the church wherever they found it, all through the diocese.—They did not burn churches or conventos, or loot. Samar is the exception. Between the American troops and the Insurrectos, this province was reduced to desolation, and not more than five or six churches and conventos left in the whole province. The most of the damage was done by the Insurrectos and ladrones, but a considerable portion by Americans. The most of the damage done also under the dominion of the civil

government. This government instituted five kinds of peace officers. For convenience sake I include the Regular Army, as their function in time of peace was not to do war duty.

First, the regular army; second, the scouts; third, the constabulary; fourth, the municipal police; fifth, the native volunteers, armed with pikes only. These five bodies were ruled by no common authority, and consequently never acted in concert or for mutual support. The instituting of this system of policing was a grave mistake. It resulted in an enormous waste of money and lives, without any visible compensating results, as the condition of this province was worse in 1905, when Governor Curry took charge, than at any time since Spanish occupation. The fact that Governor Curry has brought about peace, and has almost extingulshed the outlaw element, shows that it might have been done five years before. Governor Curry, before accepting this difficult charge, demanded and received, as a condition, the support of all classes of the police service, and the great results accomplished under his care have been done with less expense and still less loss of life. During the time before he came some of the towns were burnt four or five times, many more two and three times. My contention from all this is that the United States might have protected life and property in this island and did not do it, leaving the ruling of the island to less than twenty outlaws. For this reason it is responsible for these losses.

In conclusion, I wish to say that these losses are being daily increased by the delay in considering and auditing them. We have no diocesan fund. There is no fund elsewhere in the world from which we may draw. The priests and bishops have no salaries.

Where churches have been destroyed the people are worshiping in huts made of bamboo and grass, hoping for some help from elsewhere. The people are exceedingly poor everywhere.

Owing to the difficulties of interisland transportation, it sometimes requires a year to get replies from letters. For this reason some claims are here presented which were not presented before.

I have mentioned here damages done by Insurrectos, not because I believe that the United States is chargeable for them, but for consideration as showing our helplessness.

NUEVA CACERES, December 15, 1906.

Lieut. Col. JOHN A. HULL,

President of the Board on Church Claims, Manila, P. I.

SIR: In accordance with the wishes of the board, I have the honor to submit the following detailed list of claims of the diocese of Nueva Caceres which were not included in the proceedings of recommendations of the board, or if included were entirely denied:

Pueblo.	Province.	Amount claimed.
1 Lupi.....	Ambos Camarines.....	₱11,000.00
2 Bagay.....	do.....	83,000.00
3 Sipocot.....	do.....	5,000.00
4 Bosainga.....	Sorsogon.....	11,345.00
5 Castolla.....	do.....	585.00
6 Matnog.....	do.....	800.00
7 Masbate.....	do.....	2,550.00
8 Pilar.....	do.....	34,000.00
9 Macalelon.....	Tayabas.....	265.00
10 Jovellar.....	Albay.....	1,829.00
11 Pandan.....	do.....	287.00
12 Bula.....	Ambos Camarines.....	500.00
13 Indan.....	do.....	5,353.00
14 Labo.....	do.....	53,974.25
15 Libmanan.....	do.....	5,530.00
16 Capalonga.....	do.....	5,450.00
17 Mangniring.....	do.....	11,700.00
18 Minalabag.....	do.....	705.00
19 Pamplona.....	do.....	678.00
20 Bulusan.....	Sorsogon.....	144,745.00
21 Bacon.....	do.....	360.00
22 Alabat.....	Tayabas.....	101.46
23 Dolores.....	do.....	12,470.00
24 Guinayangan.....	do.....	

See details on table herewith inclosed.

In the first place, I wish to call your attention to the important fact that wherever a claim is made for building burned, belonging to the Roman Catholic Church and situated in the above-mentioned pueblos, it is exclusively due to acts of the American troops and never to the insurgents, who, true enough, burned some of the churches and parish houses during the past insurrection against the Government of the United States, such as the churches at Canaman and Magarao, in the province of Cambo Camarines, and that of Guinobatan in the province of Albay, all of which is set forth in detail on a separate list as part of this report, marked No. 2.

By considering the fact that the price of labor has increased to three times the amount formerly paid to laborers, the high price of the materials used in the construction of similar buildings, the more or less large amount of time necessary to begin and carry out this class of works, and the expenses connected therewith, the board can easily see that the amounts claimed for the burning of the building is the most moderate that could be asked. In former times when agriculture, the source of wealth of this province, was prosperous, the people helped the parish priest according to their means, some contributed money, some rice, and others labor, or gratuitous services of all kinds connected with the churches and convents; but unfortunately nothing of this nature can be looked forward to at the present time, owing to the poor state in which the province finds itself on account of the calamities by which it has been afflicted, such as rinderpest, invasion by locusts, and drought to such an extent that the people can scarcely make a living, and consequently the Catholic Church of this diocese is reduced to the most deplorable situation that can be imagined. The poverty and want of many of the churches is increasing every year more and more, so much so that some of the priests are forced to borrow ornaments from other churches in order to celebrate the religious ceremonies any way decently. This is easy to understand, if we consider that the economic condition of the churches in the present circumstances is entirely dependent on the people for subsistence, while, during better times, the Spanish Government by the concordat of 1851, and the convention of 1859, bound itself to gratuitously, and strictly according to justice, support the parish priests and pay the expense of the cult.

Allow me to outline the following comparative table:

Province.	Amount claimed.	Amount recommended.
Albay.....	P141,068.00	P22,935.00
Ambos Camarines.....	212,194.22	57,009.00
Sorsogon.....	216,065.00	11,165.00
Tayabas.....	61,677.90	25,515.00
Total.....	631,005.12	116,624.00

There being a difference of P514,381.12.

If we distribute the amounts recommended by the board in equal parts among the pueblos having claims in each province there would fall to each pueblo an average of P3,000. This figure shows the small amount that the Government of the United States, which I have always firmly believed and hoped would willingly increase it, owing to its proverbial generosity, can allow us.

Three thousand pesos would not even be sufficient to equip and furnish a church decently. It is enough to say that according to church laws and rules, we are required to use ornaments of five different colors, viz: White, red, violet, black, and green, with their respective adherents, such as stoles, maniples, veil chalices, etc., which are always of silk or goods of greater value, never of coarse textures, and if we add to these the retablos, tabernacles, and many other things required by the Roman Catholic cult, it is easy to understand how expensive it is to even modestly provide ornament for each church.

Before closing, I beg the board's permission to make the following remarks:

First. During the short-lived Filipino Republic, certain officers, countrymen of mine, in compliance with orders received from Sr. Emilio Aguinaldo, seized the funds of most of the parishes of this bishopric as a forcible loan, which was never recovered, nor is there any chance of its ever being recovered.

Second. Therefore this diocese has been in a critical financial situation these last eight years, the result of which is that many of the churches and parish

houses are in a ruinous state and others were destroyed by the typhoon or fire, and until this date we have been unable to rebuild them, in spite of our earnest desire to do so.

Third. The lack of churches in the Philippine pueblos and in the remote barrios where the people can congregate on Sundays and holy days is the most doleful thing for the natives, who hold in their hearts the dearest affection to the Catholic religion, which they profess.

Fourth. The most urgent repairs to many of the church buildings heretofore made were effected by means of loans on which an interest of 6 per cent, at least, must be paid; by this you can perfectly understand that the condition of this diocese is getting worse every year that the payment of our claim is delayed.

Fifth. The rebuilding of the church at Guinobatan, province of Albany, is, in my humble opinion, a convincing proof of the enormous expenses that will be caused to the Roman Church in analogous cases. The repairing of the said church of Guinobatan, which walls were not damaged by the fire when burned by the insurgents, has cost about \$100,000, and this could not have been done had it not been for the praiseworthy efforts of the parish priest of the said pueblo, assisted by the liberal contributions of the inhabitants.

Sixth. Finally, if the board, of which you are the worthy president, can not reopen the cases previously considered, none of the amounts recommended by the first board being susceptible of increase, I beg to submit for the consideration of the new board the accompanying statements of identical damages done by the insurgents during the past insurrection against the Government of the United States.

In view of the foregoing considerations, I again beg the board, in my own name and in the name of all the parishes of this diocese, to recommend to the honorable Secretary of War to kindly grant us, at the least, two-thirds of the amount represented in the above-mentioned claims, which, added to the amounts previously recommended by the board, would be a base for the realization of our project of rebuilding little by little the ruinous buildings and repair those that threaten ruin, and to provide a decent ornamentation for the churches most in need of it. This is all I have to say to the board in representation of the interests of this diocese, etc.

Very respectfully,

(Sgd.) JORGE BARLIN,
Bishop of Nueva Caceres.

The CHAIRMAN. Does any member of the committee desire to elicit any further statement of facts from Colonel Hull bearing on any of these claims. Do you, Mr. Denver, Mr. Fornes, Mr. Helm, Mr. Jones, Mr. Garrett, Mr. Olmsted, Mr. Graham, Mr. Davis, Mr. Page?

Mr. JONES. I want to ask just one question, to be put in the record. Just let me ask that one question.

I notice on page 31 of your report, "Claim No. 394, Lagonoy." Is that the church property that was the subject of controversy in the case which went up to the supreme court and was decided by the supreme court?

Colonel HULL. It is my belief that it is the same.

The CHAIRMAN. Now, gentlemen, with your permission, right here I will read the syllabus of the opinion of the supreme court of the Philippine Islands on this Lagonoy case, and then ask permission to print both opinions in full in the record. The case is found in volume 7 of the Reports of the Supreme Court of the Philippine Islands.

(At this point the chairman read to the committee the syllabus of the opinion. The following is the complete opinions:)

[No. 2832. November 24, 1906.]

The United States of America. In the supreme court of the Philippine Islands.

Rev. Jorge Barlin, in his capacity as apostolic administrator of this vacant bishopric and legal representative of the general interests of the Roman Catholic Apostolic Church in the diocese of Nueva Caceres, plaintiff and appellee, *v.* P. Vicente Ramirez, ex-rector of the Roman Catholic Apostolic Parochial Church of Lagonoy, and the Municipality of Lagonoy, defendants and appellant.

1. Church buildings; possession; administration; estoppel.

1. In an action brought by the Roman Catholic Church to recover a church building against a priest whom it has put in possession thereof to administer the same, the latter is estopped from alleging ownership at the time he took possession, either in himself or in a third person.

2. *Obispo de Cebu v. Mangaron*, No. 1748, June 1, 1906, followed to the point that a person in possession of real estate who has been deprived of such possession can recover it unless the defendants can show a better right thereto.

3. The government of the Philippine Islands has never undertaken to transfer to the municipalities the ownership or right of possession of the churches therein.

4. Prior to the cession of the Philippines to the United States the King of Spain was not the owner of the consecrated churches therein and had no right to the possession thereof. The exclusive right to such possession was in the Roman Catholic Church, and such right has continued since such cession and now exists.

5. The Roman Catholic Church is a juridical person in the Philippine Islands.

Per CARSON, J., concurring in the result:

6. *Church buildings; ownership.*—The legal title to the state-constructed churches in the Philippine Islands is in the United States.

7. *Id.; usufruct.*—The beneficial ownership of these churches is in the people of the Philippine Islands.

8. *Id.; possession and control.*—The right to the possession and control of these churches is in the Roman Catholic Church so long as it continues to use them for the purposes for which they were dedicated.

Appeal from a judgment of the court of first instance of Ambos Camarines.

The facts are stated in the opinion of the court.

Leoncio Imperial and Chicote, Miranda & Sierra, for the plaintiff and appellee.

Manly & Gallup, for the defendants and appellants.

WILLARD, J.: There had been priests of the Roman Catholic Church in the pueblo of Lagonoy, in the Province of Ambos Camarines, since 1839. On the 13th of January, 1869, the church and convent were burned. They were rebuilt between 1870 and 1873. There was evidence that this was done by the order of the provincial governor. The labor necessary for this reconstruction was performed by the people of the pueblo under the direction of the cabezas de barangay. Under the law then in force, each man in the pueblo was required to work for the government, without compensation, for forty days every year. The time spent in the reconstruction of these buildings was counted as a part of the forty days. The material necessary was bought and paid for in part by the parish priest from

the funds of the church and in part was donated by certain individuals of the pueblo. After the completion of the church it was always administered, until November 14, 1902, by a priest of the Roman Catholic Communion and all the people of the pueblo professed that faith and belonged to that church.

The defendant, Ramirez, having been appointed, by the plaintiff, parish priest, took possession of the church on the 5th of July, 1901. He administered it as such under the orders of his superiors until the 14th day of November, 1902. His successor having been then appointed, the latter made a demand on this defendant for the delivery to him of the church, convent, and cemetery, and the sacred ornaments, books, jewels, money, and other property of the church. The defendant, by a written document of that date, refused to make such delivery. That document is as follows:

At 7 o'clock last night I received, through Father Agripino Pisino, your respected order of the 12th instant wherein I am advised of the appointment of Father Pisino as acting parish priest of this town, and directed to turn over to him this parish and to report to you at the vicarage. In reply thereto I have the honor to inform you that the town of Lagonoy, in conjunction with the parish priest thereof, has seen fit to sever connection with the Pope at Rome and his representatives in these islands and to join the Filipino Church, the head of which is at Manila. This resolution of the people was reduced to writing and triplicate copies made, of which I beg to inclose a copy herewith.

For this reason I regret to inform you that I am unable to obey your said order by delivering to Father Agripino Pisino the parish property of Lagonoy which, as I understand it, is now outside of the control of the Pope and his representatives in these islands. May God guard you many years.

Lagonoy, November 14, 1902.

VICENTE RAMIREZ.

Rt. Rev. VICAR OF THIS DISTRICT.

The document, a copy of which is referred to in this letter, is as follows:

LAGONNOY, November 9, 1902.

The municipality of this town and some of its most prominent citizens, having learned through the papers from the capital of these islands of the constitution of the Filipino National Church, separate from the control of the Pope at Rome by reason of the fact that the latter has refused to either recognize or grant the rights to the Filipino clergy, which have many times been urged, and it appearing to us that the reason advanced why such offices should be given to the Filipino clergy are evidently well founded, we have deemed it advisable to consult with the parish priest of this town as to whether it would be advantageous to join the said Filipino Church and to separate from the control of the Pope as long as he continues to ignore the rights of the said Filipino clergy, under the conditions that there will be no change in the articles of faith, and that the sacraments and other dogmas will be recognized and particularly that of the immaculate conception of the mother of our Lord. But the moment the Pope at Rome recognizes and grants the rights heretofore denied to the Filipino clergy we will return to his control. In view of this and subject to this condition, the reverend parish priest, together with the people of the town, unanimously join in declaring that from this date they separate themselves from the obedience and control of the Pope and join the Filipino National Church. This assembly and the reverend parish priest have accordingly adopted this resolution, written in triplicate, and resolved to send a copy thereof to the civil government of this province for its information, and do sign the same below.

Vicente Ramirez, Francisco Israel, Ambrosio Bocon, Florentine Reloso, Macario P. Ledesma, Cecilio Obias, Balbino Imperial, Juan Preseñada, Fernando Deudor, Mauricio Torres, Adriano Sabater.

At the meeting at which the resolution spoken of in this document was adopted, there were present about 100 persons of the pueblo.

There is testimony in the case that the population of the pueblo was at that time 9,000 and that all but 20 of the inhabitants were satisfied with the action there taken. Although it is of no importance in the case, we are inclined to think that the testimony to this effect merely means that about 100 of the principal men of the town were in favor of the resolution and about 20 of such principal men were opposed to it. After the 14th of November, the defendant, Ramirez, continued in the possession of the church and other property and administered the same under the directions of his superior, the Obispo Maximo of the Independent Filipino Church. The rites and ceremonies and the manner of worship were the same after the 14th day of November as they were before, but the relations between the Roman Catholic Church and the defendant had been entirely severed.

In January, 1904, the plaintiff brought this action against the defendant, Ramirez, alleging in his amended complaint that the Roman Catholic Church was the owner of the church building, the convent, cemetery, the books, money, and other property belonging thereto, and asking that it be restored to the possession thereof and that the defendant render an account of the property which he had received and which was retained by him, and for other relief.

The answer of the defendant, Ramirez, in addition to a general denial of the allegations of the complaint, admitted that he was in the possession and administration of the property described therein with the authority of the municipality of Lagonoy and of the inhabitants of the same, who were the lawful owners of the said property. After this answer had been presented, and on the 1st day of November, 1904, the municipality of Lagonoy filed a petition asking that it be allowed to intervene in the case and join with the defendant, Ramirez, as a defendant therein. This petition having been granted, the municipality on the 1st day of December filed an answer in which it alleged that the defendant, Ramirez, was in possession of the property described in the complaint under the authority and with the consent of the municipality of Lagonoy and that such municipality was the owner thereof.

Plaintiff answered this complaint, or answer in intervention, and the case was tried and final judgment entered therein in favor of the plaintiff and against the defendants. The defendants then brought the case here by a bill of exceptions.

That the person in the actual possession of the church and other property described in the complaint is the defendant, Ramirez, is plainly established by the evidence. It does not appear that the municipality, as a corporate body, ever took any action in reference to this matter until they presented their petition for intervention in this case. In fact, the witnesses for the defense, when they speak of the ownership of the buildings, say they are owned by the people of the pueblo, and one witness, the president, said that the municipality as a corporation had nothing whatever to do with the matter. That the resolution adopted on the 14th of November, and which has been quoted above, was not the action of the municipality, as such, is apparent from an inspection thereof.

The witnesses for the defense speak of a delivery of the church by the people of the pueblo to the defendant, Ramirez, but there is no evidence in the case of any such delivery. Their testimony in regard

to the delivery always refers to the action taken on the 14th of November, a record of which appears in the document above quoted. It is apparent that the action then taken consisted simply in separating themselves from the Roman Catholic Church, and nothing is said therein in reference to the material property then in the possession of the defendant, Ramirez.

There are several grounds upon which this judgment must be affirmed:

(1) As to the defendant, Ramirez, it appears that he took possession of the property as the servant or agent of the plaintiff. The only right which he had to the possession at the time he took it was the right which was given to him by the plaintiff, and he took possession under the agreement to return that possession whenever it should be demanded of him. Under such circumstances he will not be allowed, when the return of such possession is demanded of him by the plaintiff, to say that the plaintiff is not the owner of the property and is not entitled to have it delivered back to him. The principle of law that a tenant can not deny his landlord's title, which is found in article 333, paragraph 2, of the Code of Civil Procedure, and also in the Spanish law, is applicable to a case of this kind. An answer of the defendant, Ramirez, in which he alleged that he himself was the owner of the property at the time he received it from the plaintiff, or in which he alleged that the pueblo was the owner of the property at that time, would constitute no defense. There is no claim made by him that since the delivery of the possession of the property to him by the plaintiff he has acquired the title thereto by other means, nor does he in his own behalf make any claim whatever either to the property or to the possession thereof.

(2) The municipality of Lagonoy, in its answer, claims, as such, to be the owner of the property. As we have said before, the evidence shows that it never was in the physical possession of the property. But waiving this point and assuming that the possession of Ramirez, which he alleges in his answer is the possession of the municipality, gives the municipality the rights of a possessor, the question still arises, Who has the better right to the present possession of the property? The plaintiff, in 1902, had been in the lawful possession thereof for more than thirty years and during all that time its possession had never been questioned or disturbed. That possession has been taken away from it and it has the right now to recover the possession from the persons who have so deprived it of such possession, unless the latter can show that they have a better right thereto. This was the proposition which was discussed and settled in the case of the Bishop of Cebu *v.* Mangaron, No. 1748, decided June 1, 1906. That decision holds that as against one who has been in possession for the length of time the plaintiff has been in possession, and who has been deprived of his possession, and who can not produce any written evidence of title, the mere fact that the defendant is in possession does not entitle the defendant to retain that possession. In order that he may continue in possession, he must show a better right thereto.

The evidence in this case does not show that the municipality has, as such, any right whatever in the property in question. It has produced no evidence of ownership. Its claim of ownership is rested in

its brief in this court upon the following propositions: That the property in question belonged prior to the treaty of Paris to the Spanish Government; that by the treaty of Paris the ownership thereof passed to the Government of the United States; that by article 12 of the act of Congress of July 1, 1902, such property was transferred to the government of the Philippine Islands, and that by the circular of that government, dated November 11, 1902, the ownership and the right to the possession of this property passed to the municipality of Lagonoy. If, for the purposes of the argument, we should admit that the other propositions are true, there is no evidence whatever to support the last proposition, namely, that the government of the Philippine Islands has transferred the ownership of this church to the municipality of Lagonoy. We have found no circular of the date above referred to. The one of February 10, 1903, which is probably the one intended, contains nothing that indicates any such transfer. As to the municipality of Lagonoy, therefore, it is very clear that it has neither title, ownership, nor right to possession.

(3) We have said that it would have no such title or ownership even admitting that the Spanish Government was the owner of the property and that it passed by the treaty of Paris to the American Government. But this assumption is not true. As a matter of law, the Spanish Government at the time the treaty of peace was signed was not the owner of this property, nor of any other property like it situated in the Philippine Islands.

It does not admit of doubt that from the earliest times the parish churches in the Philippine Islands were built by the Spanish Government. Law 2, title 2, book 1, of the Compilation of the Laws of the Indies is, in part, as follows:

Having erected all the churches, cathedrals, and parish houses of the Spaniards and natives of our Indian possessions from their discovery at the cost and expense of our royal treasury, and applied for their service and maintenance the part of the tithes belonging to us by apostolic concession according to the division we have made.

Law 3 of the same title relates to the construction of parochial churches such as the one in question. That law is as follows:

The parish churches which may be erected in Spanish towns shall be of durable and decent construction. Their cost shall be divided and paid in three parts: One by our royal treasury, another by the residents and Indian encomenderos of the place where such churches are constructed, and the other part by the Indians who abide there; and if within the limits of a city, village, or place there should be any Indians incorporated to our royal crown, we command that for our part there be contributed the same amount as the residents and encomenderos, respectively, contribute; and the residents who have no Indians shall also contribute for this purpose in accordance with their stations and wealth, and that which is so given shall be deducted from the share the Indians should pay.

Law 11 of the same title is as follows:

We command that the part of the tithes which belongs to the fund for the erection of churches shall be given to their superintendents to be expended for those things necessary for these churches with the advice of the prelates and the officials, and by their warrants, and not otherwise. And we request and charge the archbishops and the bishops not to interfere in the collection and disbursement thereof, but to guard these structures.

Law 4, title 3, book 6, is as follows:

In all settlements, even though the Indians are few, there shall be erected a church where mass can be decently held, and it shall have a door with a key, notwithstanding the fact that it be subject to or separate from a parish.

Not only were all the parish churches in the Philippines erected by the King and under his direction, but it was made unlawful to erect a church without the license of the King. This provision is contained in Law 2, title 6, book 1, which is as follows:

Whereas it is our intention to erect, institute, found, and maintain all cathedrals, parish churches, monasteries, votive hospitals, churches, and religious and pious establishments where they are necessary for the teaching, propagation, and preaching of the doctrine of our sacred Roman Catholic faith, and to aid to this effect with our royal treasury whenever possible, and to receive information of such places where they should be founded and are necessary, and the ecclesiastical patronage of all our Indies belonging to us:

We command that there shall not be erected, instituted, founded, or maintained any cathedral parish church, monastery, hospital, or votive churches, or other pious or religious establishment without our express permission, as is provided in Law 1, title 2, and Law 1, title 3, of this book, notwithstanding any permission heretofore given by our viceroy or other ministers, which in this respect we revoke and make null, void, and of no effect.

By agreement at an early date between the Pope and the Crown of Spain, all tithes in the Indies were given by the former to the latter, and the disposition made by the King of the fund thus created is indicated by Law 1, title 16, book 1, which is as follows:

Whereas the ecclesiastical tithes from the Indies belong to us by apostolic concessions of the supreme pontiffs, we command the officials of our royal treasury of those provinces to collect and cause to be collected all tithes due and to become due from the crops and flocks of the residents in the manner in which it has been the custom to pay the same, and from the tithes the churches shall be provided with competent persons of good character to serve them and with all ornaments and things which may be necessary for divine worship, to the end that these churches may be well served and equipped, and we shall be informed of the provisions made, it pertaining to the worship of God, our Lord; this order shall be observed where the contrary has not already been directed by us in connection with the erection of churches.

That the condition of things existing by virtue of the Laws of the Indies was continued to the present time is indicated by the royal order of the 31st of January, 1856, and by the royal order of the 13th of August, 1876, both relating to the construction and repair of churches, there being authority for saying that the latter order was in force in the Philippines.

This church, and other churches similarly situated in the Philippines, having been erected by the Spanish Government and under its direction, the next question to be considered is, To whom did these churches belong?

Title 28 of the third Partida is devoted to the ownership of things, and after discussing what can be called public property and what can be called private property, speaks, in Law 12, of those things which are sacred, religious, or holy. That law is as follows:

LAW 12.—How sacred or religious things can not be owned by any person.—No sacred, religious, or holy thing, devoted to the service of God, can be the subject of ownership by any man, nor can it be considered as included in his property holdings. Although the priests may have such things in their possession, yet they are not the owners thereof. They hold them thus as guardians or servants, or because they have the care of the same and serve God in or with them. Hence they were allowed to take from the revenues of the church and lands what was reasonably necessary for their support; the balance, belonging to God, was to be devoted to pious purposes, such as the feeding and clothing of the poor, the support of orphans, the marrying of poor virgins to prevent their becoming evil women because of their poverty, and for the redemption of captives and the repairing of the churches, and the buying of

chalices, clothing, books, and other things which they might be in need of, and other similar charitable purposes.

And then taking up for consideration the first of the classes into which this law has divided these things, it defines in Law 13 consecrated things. That law is as follows:

Sacred things, we say, are those which are consecrated by the bishops, such as churches, the altars therein, crosses, chalices, censers, vestments, books, and all other things which are intended for the service of the church, and the title to these things can not be alienated, except in certain specific cases, as we have already shown in the first *partida* of this book by the laws dealing with this subject. We say further that even where a consecrated church is razed, the ground upon which it formerly stood shall always be consecrated ground. But if any consecrated church should fall into the hands of the enemies of our faith it shall there and then cease to be sacred as long as the enemy has it under control, although once recovered by the Christians, it will again become sacred, reverting to its condition before the enemy seized it and shall have all the rights and privileges formerly belonging to it.

That the principles of the *Partidas* in reference to churches still exist is indicated by Sanchez Roman, whose work on the civil law contains the following statement:

First group. Spiritual and corporeal or ecclesiastical. A. Spiritual.—From early times distinction has been made by authors and by law between things governed by divine law, called divine, and those governed by human law, called human, and although the former can not be the subject of civil, juridical relations, their nature and species should be ascertained either to identify them and exclude them from such relations or because they furnish a complete explanation of the foregoing tabulated statement, or, finally, because the laws of the *partidas* deal with them.

Divine things are those which are either directly or indirectly established by God for his service and sanctification of men, and which are governed by divine or canonical laws. This makes it necessary to divide them into spiritual things, which are those which have a direct influence on the religious redemption of man, such as the sacrament, prayers, fasts, indulgences, etc., and corporeal or ecclesiastical, which are those means more or less direct for the proper religious salvation of man.

7. First group. Divine things. B. Corporeal or ecclesiastical things (sacred, religious, holy, and temporal, belonging to the church).—Corporeal or ecclesiastical things are so divided.

(a) Sacred things are those devoted to God, religion, and worship in general, such as temples, altars, ornaments, etc. These things can not be alienated except for some pious purpose and in such cases as are provided for in the laws, according to which their control pertains to the ecclesiastical authorities, and in so far as their use is concerned, to the believers and the clergy. (2 *Derecho Civil Español*, Sanchez Roman, p. 480; 8 *Manresa*, Commentaries on the Spanish and Civil Code, p. 636; 3 *Alcubilla*, *Diccionario de la Administración Española*, p. 486.)

The *Partidas* defined minutely what things belonged to the public in general and what belonged to private persons. In the first group churches are not named. The present Civil Code declares in article 338 that property is of public or private ownership. Article 339, which defines public property, is as follows:

Property of public ownership is—

1. That destined to the public use, such as roads, canals, rivers, torrents, ports, and bridges constructed by the State, and banks, shores, roadsteads, and that of a similar character.

2. That belonging exclusively to the State without being for public use and which is destined to some public service, or to the development of the national wealth, such as walls, fortresses, and other works for the defense of the territory, and mines, until their concession has been granted.

The code also defines the property of provinces and of pueblos, and in defining what property is of public use, article 344 declares as follows:

Property for public use in provinces and in towns comprises the provincial and town roads, the squares, streets, fountains, and public waters, the promenades, and public works of general service supported by the said towns or provinces.

All other property possessed by either is patrimonial, and shall be governed by the provisions of this code, unless otherwise prescribed in special laws.

It will be noticed that in neither one of these articles is any mention made of churches. When the Civil Code undertook to define those things in a pueblo which were for the common use of the inhabitants of the pueblo, or which belonged to the State, while it mentioned a great many other things, it did not mention churches.

It has been said that article 25 of the Regulations for the Execution of the Mortgage Law indicates that churches belong to the State and are public property. That article is as follows:

There shall be excepted from the record required by article 2 of the law:

First. Property which belongs exclusively to the eminent domain of the State, and which is for the use of all, such as the shores of the sea, islands, rivers and their borders, wagon roads, and roads of all kinds, with the exception of railroads; streets, parks, public promenades, and commons of towns, provided they are not lands of common profit to the inhabitants; walls of cities and parks, ports, and roadsteads, and any other analogous property during the time they are in common and general use, always reserving the servitude established by law on the shores of the sea and borders of navigable rivers.

Second. Public temples dedicated to the Catholic faith.

A reading of this article shows that so far from proving that churches belong to the State and are for the use of all, it proves the contrary, for, if they had belonged to the State, they would have been included in the first paragraph instead of being placed in a paragraph by themselves.

The truth is that, from the earliest times down to the cession of the Philippines to the United States, churches and other consecrated objects were considered outside of the commerce of man. They were not public property, nor could they be subjects of private property in the sense that any private person could be the owner thereof. They constituted a kind of property the distinctive characteristic of which was that it was devoted to the worship of God.

But, being material things, it was necessary that some one should have the care and custody of them and the administration thereof, and the question occurs, To whom, under the Spanish law, was intrusted that possession and administration? For the purposes of the Spanish law there was only one religion. That was the religion professed by the Roman Catholic Church. It was for the purposes of that religion and for the observance of its rites that this church and all other churches in the Philippines were erected. The possession of the churches, their care and custody, and the maintenance of religious worship therein were necessarily, therefore, intrusted to that body. It was, by virtue of the laws of Spain, the only body which could under any circumstances have possession of, or any control over, any church dedicated to the worship of God. By virtue of those laws this possession and right of control were necessarily exclusive. It is not

necessary or important to give any name to this right of possession and control exercised by the Roman Catholic Church in the church buildings of the Philippines prior to 1898. It is not necessary to show that the church as a judicial person was owner of the buildings. It is sufficient to say that this right to the exclusive possession and control of the same for the purposes of its creation existed.

The right of patronage existing in the King of Spain with reference to the churches in the Philippines did not give him any right to interfere with the material possession of these buildings.

Title 6 of book 1 of the Compilation of the Laws of the Indies treats of "Del Patronazgo Real de las Indians." There is nothing in any one of the fifty-one laws which compose this title which in any way indicates that the King of Spain was the owner of the churches in the Indies because he had constructed them. These laws relate to the right of presentation to ecclesiastical charges and offices. For example, Law 49 of the title commences as follows:

Because the patronage and right of presentation of all archbishops, bishops, dignitaries, prebends, curates, and doctrines and all other benefices and ecclesiastical offices whatsoever belong to us, no other person can obtain or possess the same without our presentation as provided in Law 1 and other laws of this title.

Title 15 of the first Partida treats of the right of patronage vesting in private persons, but there is nothing in any one of its fifteen laws which in any way indicates that the private patron is the owner of the church.

When it is said that this church never belonged to the Crown of Spain, it is not intended to say that the Government had no power over it. It may be that by virtue of that power of eminent domain which necessarily resides in every government, it might have appropriated this church and other churches, and private property of individuals. But nothing of this kind was ever attempted in the Philippines.

It therefore follows that in 1898, and prior to the treaty of Paris, the Roman Catholic Church had by law the exclusive right to the possession of this church, and it had the legal right to administer the same for the purposes for which the building was consecrated. It was then in the full and peaceful possession of the church with the rights aforesaid. That these rights were fully protected by the treaty of Paris is very clear. That treaty, in article 8, provides, among other things, as follows:

And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, can not in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals, of whatsoever nationality such individuals may be.

It is not necessary, however, to invoke the provisions of that treaty. Neither the Government of the United States, nor the Government of these Islands, has ever attempted in any way to interfere with the rights which the Roman Catholic Church had in this building when Spanish sovereignty ceased in the Philippines. Any interference that has resulted has been caused by private individuals, acting without any authority from the Government. Against such interference by private persons with the rights of others redress is given

in the courts of justice without reference to the provisions of the treaty of Paris.

No point is made in the brief of the appellant that any distinction should be made between the church and the convent. The convent undoubtedly was annexed to the church and, as to it, the provisions of Law 19, title 2, book 1, of the Compilation of the Laws of the Indies would apply. That law is as follows:

We command that the Indians of each town or barrio shall construct such houses as may be deemed sufficient, in which the priests of such towns or barrios may live comfortably adjoining the parish church of the place where they may be built, for the benefit of the priests in charge of such churches and engaged in the education and conversion of their Indian parishioners, and they shall not be alienated or devoted to any other purpose.

The evidence in this case makes no showing in regard to the cemetery. It is always mentioned in connection with the church and convent, and no point is made by the appellant that if the plaintiff is entitled to recover the possession of the church and convent he is not also entitled to recover possession of the cemetery. So, without discussing the question as to whether the rules applicable to churches are in all respects applicable to cemeteries, we hold for the purpose of this case that the plaintiff has the same right to the cemetery that he has to the church.

(4) It is suggested by the appellant that the Roman Catholic Church has no legal personality in the Philippine Islands. This suggestion, made with reference to an institution which antedates by almost a thousand years any other personality in Europe, and which existed "when Grecian eloquence still flourished in Antioch, and when idols were still worshiped in the temple of Mecca," does not require serious consideration. In the preamble to the budget relating to ecclesiastical obligations, presented by Montero Rios to the Cortes on the 1st of October, 1871, speaking of the Roman Catholic Church, he says:

Persecuted as an unlawful association since the early days of its existence up to the time of Gallieno, who was the first of the Roman emperors to admit it among the juridical entities protected by the laws of the Empire, it existed until then by the mercy and will of the faithful and depended for such existence upon pious gifts and offerings. Since the latter half of the third century, and more particularly since the year 313, when Constantine, by the edict of Milan, inaugurated an era of protection for the church, the latter gradually entered upon the exercise of such rights as were required for the acquisition, preservation, and transmission of property the same as any other juridical entity under the laws of the Empire. (3 Dictionary of Spanish Administration, Alcubilla, p. 211. See also the royal order of the 4th of December, 1890, 3 Alcubilla, 189.)

The judgment of the court below is affirmed, with the costs of this instance against the appellant. After the expiration of twenty days from the date hereof let judgment be entered in accordance herewith, and ten days thereafter the record will be remanded to the court below. So ordered.

Arellano, C. J., Torres, Mapa, and Tracey, JJ., concur.

Mr. Justice Johnson reserved his vote.

Judgment affirmed.

CARSON, J., concurring:

I am in entire accord with the majority of the court as to the disposition of this case, but I can not adopt the reasoning by which some of the conclusions appear to have been obtained, nor accept without reserve all of the propositions laid down in the majority opinion.

Profoundly as I respect the judgment of my associates, and distrustful as I ought to be of my own, the transcendent importance of the issues involved seems to impose upon me the duty of writing a separate opinion and stating therein as clearly as may be the precise grounds upon which I base my assent and the reasons which forbid my acceptance of the majority opinion in its entirety.

I accept the argument and authority of the opinion of the court in so far as it finds: That the Roman Catholic Church is a juridical entity in the Philippine Islands; that the defendant, Ramirez, can not and should not be permitted in this action to deny the plaintiff's right to the possession of the property in question, because he can not be heard to set up title thereto in himself or a third person, at least until he has first formally surrendered it to the plaintiff who intrusted it to his care; that the municipality of Lagonoy has failed to show by evidence of record that it is or ever was in physical possession of the property in question; and that the possession of the defendant, Ramirez, can not be relied upon as the possession of the municipality, because the same reason which estops Ramirez from denying the right of possession in the plaintiff estops any other person claiming possession through him from denying that right. I agree, furthermore, with the finding that the defendant municipality failed to establish a better right to the possession than the plaintiff in this action, because, claiming to be the owner by virtue of a grant from the Philippine government, it failed to establish the existence of such grant; and because, furthermore, it was shown that the plaintiff or his predecessors had been in possession and control of the property in question for a long period of years prior to the treaty of Paris by lawful authority of the King of Spain, and that since the sovereignty of these islands has been transferred to the United States the new sovereign has never at any time divested or attempted to divest the plaintiff of this possession and control.

Thus far I am able to accept the reasoning of the majority opinion, and these propositions, supported as they are by the law and the evidence in this case, completely dispose of the question before us and establish the right of the plaintiff to a judgment for possession.

I am not prepared, however, to give my assent to the proposition that prior to the treaty of Paris "The King of Spain was not the owner of the property in question nor of any other property like it situated in the Philippine Islands," and inferentially that the United States is not now the owner thereof and has no property rights therein other than, perhaps, the mere right of eminent domain.

I decline to affirm this proposition, first, because it is not necessary in the decision of this case; and second, because I am of opinion that, in the unlimited and unrestricted sense in which it is stated in the majority opinion, it is inaccurate and misleading, if not wholly erroneous.

That it is not necessary for the proper disposition of this case will be apparent if we consider the purpose for which it is introduced in the argument and the proposition which it is intended to controvert. As stated in the majority opinion, the claim of ownership of the defendant municipality—

is rested upon the following propositions: That the property in question belonged, prior to the treaty of Paris, to the Spanish Government; that by the treaty of Paris the ownership thereof passed to the Government of the United

States; that by article 12 of the act of Congress of July 1, 1902, such property was transferred to the government of the Philippine Islands, and that by a circular of that government dated November 11, 1902, the ownership and the right to the possession of this property passed to the municipality of Lagonoy.

It is evident that if any one of these propositions is successfully controverted, the defendants' claim of ownership must fall to the ground. The majority opinion finds (and I am in entire accord as to this finding) that neither the Government of the United States nor the Philippine government has ever made, or attempted to make, such transfer, and in making this finding it completely, conclusively, and finally disposes of defendants' claim of ownership.

All the acts of the Government of the United States and of the present government of the Philippine Islands which can have any relation to the property in question are before us, and so short a period of years has elapsed since the transfer of the sovereignty of these Islands to the United States that it is possible to demonstrate with the utmost certainty that by no act of the United States or of the government of the Philippine Islands has the ownership and possession of this property been conferred upon the defendant municipality; it is a very different undertaking, however, to review the legislation of Spain for the three centuries of her Philippine occupation for the purpose of deciding the much-vexed question of the respective property rights of the Spanish sovereign and the Roman Catholic Church in State-constructed and State-aided churches in these Islands; and if I am correct in my contention that a holding that the "King of Spain was not," and, inferentially, that the Government of the United States is not, "the owner of this property or any other property like it situated in the Philippine Islands" is not necessary for the full, final, and complete determination of the case at bar, then I think that this court should refrain from making so momentous a finding in a case wherein the United States is not a party and has never had an opportunity to be heard.

But the mere fact that a finding that the King of Spain had no right of ownership in this property which could pass to the United States under the provisions of the treaty of Paris, is not necessary in my opinion for the disposition of the case at bar, would not impose upon me the duty of writing a separate opinion if it were in fact and at law a correct holding. I am convinced, however, that when stated without limitations or restrictions, as it appears in the majority opinion, it is inaccurate and misleading, and it may not be improper, therefore, to indicate briefly my reasons for doubting it.

As stated in the majority opinion, "it does not admit of doubt that the parish churches in the Philippines were built by the Spanish Government," and it would seem therefore that prior to their dedication the beneficial ownership, the legal title, the possession and control of all this property must be taken to have been vested in that Government. But it must be admitted that after this property was dedicated the ownership, in contemplation of Spanish law, was said to have been in God, and there can be no doubt that the physical possession and control of these churches for the purposes for which they were dedicated was given to the Roman Catholic Church—not, as I think, absolutely and conclusively, but limited by and subject to the royal patronage (*patronato real*) which included the right to intervene in

the appointment of the representatives of the church into whose hands the possession and control of the sacred edifices were to be intrusted.

The anomalous status thus created might well have given rise to doubts and uncertainties as to the legal title and beneficial ownership of this property had not the grantor and the lawgiver of Spain expressly and specifically provided that neither the Roman Catholic Church, nor any other person, was or could become the owner thereof, and that all these sacred edifices were to be regarded as beyond the commerce of men.

No sacred, religious, or holy thing, devoted to the service of God, can be the subject of ownership by any man, nor can it be considered as included in his property holdings. Although the priests may have such things in their possession, yet they are not the owners thereof. They hold them thus as guardians or servants, or because they have the care of the same and serve God in or with them. Hence they were allowed to take from the revenues of the church and lands what was reasonably necessary for their support; the balance, belonging to God, was to be devoted to pious purposes, such as the feeding and clothing of the poor, the support of orphans, the marrying of poor virgins to prevent their becoming evil women because of their poverty; and for the redemption of captives and the repairing of the churches, and the buying of chalices, clothing, books, and other things which they might be in need of, and other similar charitable purposes. (Law XII, Title 28, Third Partida.)

It is difficult to determine, and still more difficult to state, the precise meaning and legal effect of this disposition of the ownership, possession, and control of the parish churches in the Philippines; but since it was not possible for God, in any usual or ordinary sense to take or hold, to enforce or to defend the legal title to this property, it would seem that a grant to Him by the King or the Government of Spain could not suffice to convey to Him the legal title of the property set out in the grant, and the truth would seem to be that the treatment of this property in contemplation of Spanish law as the property of God was a mere arbitrary convention, the purpose and object of which was to crystallize the status of all such property in the peculiar and unusual mold in which it was cast at the time of its dedication.

So long as church and state remained united and so long as the Roman Catholic Church continued to be the church of the State, this convention served its purpose well; indeed, its very indefiniteness seems to have aided in the accomplishment of the end for which it was adopted, and on a review of all the pertinent citations of Spanish law which have been brought to my attention, I am satisfied that the status created by the above-cited Law XII of the Partidas continued without substantial modification to the date of the transfer of sovereignty from the King of Spain to the United States. But this transfer of sovereignty, and the absolute severance of church and State which resulted therefrom, render it necessary to ascertain as definitely as may be the true meaning and intent of this conventional treatment of the parish churches in the Philippines as the property of God, and it is evident that for this purpose we must look to the substance rather than the form, and examine the intention of the grantor and the object he sought to attain, rather than the words and conventional terms whereby that intent was symbolically expressed.

It is not necessary to go beyond the citations of the majority opinion to see that the objects which the grantor sought to attain were, first, and chiefly, to advance the cause of religion among the people of the Philippine Islands and to provide for their religious

instruction and edification by furnishing them with parish churches suitable for the worship and glorification of God; second, to place those sacred edifices under the guardian care and custody of the church of the State; and, third, to deny to that church and to all others the right of ownership in the property thus dedicated; and since God could neither take nor hold the legal title to this property, the declaration of the King of Spain as set out in the above-cited law, that when dedicated these churches became in some peculiar and especial manner the property of God, was, in effect, no more than a solemn obligation imposed upon himself to hold them for the purposes for which they were dedicated, and to exercise no right of property in them inconsistent therewith.

This declaration that these churches are the property of God and the provisions which accompanied it, appear to me to be precisely equivalent to a declaration of trust by the grantor that he would hold the property as trustee for the use for which it was dedicated—that is, for the religious edification and enjoyment of the people of the Philippine Islands—and that he would give to the Roman Catholic Church the physical possession and control thereof, including the disposition of any funds arising therefrom, under certain stipulated conditions and for the purposes expressly provided by law. In other words, the people of the Philippine Islands became the beneficial owners of all such property, and the grantor continued to hold the legal title, in trust nevertheless to hold the property for the purposes for which it was dedicated and on the further trust to give the custody and control thereof to the Roman Catholic Church. If this interpretation of the meaning and intent of the convention of Spanish law which treated God as the owner of the parish churches of the Philippine Islands be correct, a holding that the King of Spain had no right of ownership in this property which could pass to the United States by virtue of the treaty of Paris can not be maintained; and it is to withhold my assent from this proposition that I have been compelled to write this separate opinion.

For the purposes of this opinion it is not necessary, nor would it be profitable, to do more than indicate the line of reasoning which has led me to my conclusions, nor to discuss at length the question of ownership of this property, because whether it be held to be in abeyance or in God or in the Roman Catholic Church or in the United States it has been shown without deciding this question of ownership that the right to the possession for the purpose for which it was dedicated is in the Roman Catholic Church, and while the complaint in this action alleges that the Roman Catholic Church is the owner of the property in question, the prayer of the complaint is for the possession of this property of which it is alleged that church has been unlawfully deprived; and because, furthermore, if I am correct in my contention that the legal title to the State-constructed churches in the Philippines passed to the United States by virtue of the treaty of Paris, it passed, nevertheless, subject to the trusts under which it was held prior thereto, and the United States can not at will repudiate the conditions of that trust and retain its place in the circle of civilized nations; and as long as this property continues to be used for the purposes for which it was dedicated, the Government of the United States has no lawful right to deprive the Roman Catholic Church of the possession and con-

trol thereof under the terms and conditions upon which that possession and control were originally granted.

Judgment affirmed.

[No. 2842. November 24, 1906.]

The Roman Catholic Apostolic Church and Lorenzo Gregorio, plaintiffs and appellees, v. Leonardo Santos et al., defendants and appellants.

1. *Church property; possession and occupancy.*—*Barlin v. Ramirez*, No. 2832, decided November 24, 1906, followed to the effect that the Roman Catholic Church is entitled to the possession of the church in controversy.

2. *Id.; id.; evidence.*—*Held*, That the evidence in the case does not show the existence of a *cofradia* in which was vested the ownership of the property in question.

3. *Id.; id.; id.*—The existence of an *hermano mayor* who had charge of the property is not sufficient to prove the existence of a *cofradia*.

Appeal from a judgment of the court of First Instance of Rizal.

The facts are stated in the opinion of the court.

Ledesma, Sumulong & Quintos, for appellants.

Hartigan, Rhode & Gutierrez, for appellees.

WILLARD, J.: The plaintiffs brought this action to recover the possession of a chapel and the convent annexed thereto situated in the barrio of Concepción, in the pueblo of Tanbobong, in the Province of Rizal. It is stated in a document presented by the defendants that a chapel had existed on this site for more than one hundred years. The court below made the following finding of fact:

Tercero. Que desde tiempo inmemorial hasta el año de 1902 dicha capilla ha sido destinada constantemente á las ceremonias del culto de la religión Católica Apostólica Romana habiendo sido invariables sacerdotes católicos apostólicos romanos los únicos que en ella decían misa y ejercían el ministerio de la predicación y la administración de los sacramentos del bautismo y de la confesión hasta el mes de diciembre de 1902 en que la comunión aglipayana celebró sus cultos en dicha visita y entró en posesión de la misma hasta la fecha.

The evidence, as well of the plaintiffs as of the defendants, supports the finding, and there is no evidence whatever to the contrary.

The buildings standing upon the site in question were destroyed by an earthquake in 1880 and their reconstruction was at once commenced and completed within a few years. The work of reconstruction was performed and the materials therefor furnished by the inhabitants of the barrio. One witness for the plaintiffs, Blas Marcelo, describes in detail the manner of construction, specifying the names of the persons who contributed to the erection of particular parts of the buildings, and of persons who donated ornaments and other articles for the use of the church. The witnesses for the defendants, with one exception, all stated, when asked who the owner of the chapel was, that it was owned by the people of the barrio. After its construction it was maintained and repairs were made thereon by the contributions of the Roman Catholics living in the barrio and pueblo. On the 26th of November, 1902, forcible possession of the chapel was taken by representatives of the Independent Filipino Church, and since that time worship therein has been in accordance with the rites of that church. What proportion of the people of the barrio belong to the Independent Church and what proportion belong to the Roman Catholic Church does not appear. There was, however, presented in evidence by the plaintiffs a document signed by 134 persons, in which they stated that their desire was that the chapel should be used for the purposes of the religion professed by the Roman Catholic Church.

That this building is a church, is consecrated as such, and was used, occupied, and possessed by the Roman Catholic Church, as a corporation, from the earliest times down to November, 1902, is clearly established by the evidence. This case is therefore ruled by what has been decided in the case of *Barlin v. Ramirez* (5 Off. Gaz., 130). To the authorities mentioned in that case may be added the following statement by the Supreme Court of the United States in the case of the *Mormon Church v. The United States* (136 U. S., at p. 53):

By the Spanish law, whatever was given to the service of God became incapable of private ownership, being held by the clergy as guardians or trustees; and any part not required for their own support, and the repairs, books, and furniture of the church, was devoted to works of piety, such as feeding and clothing the poor, supporting orphans, marrying poor virgins, redeeming captives, and the like. (Partida 3, tit. 28, 11, 12-15.) When the property was given for a particular object, as a church, a hospital, a convent, or a community, etc., and the object failed, the property did not revert to the donor or his heirs, but devolved to the Crown, the church, or other convent community, unless the donation contained an express condition in writing to the contrary. (Tapia, *Febrero Novísimo*, lib. 2, tit. 4, cap. 24-26.)

It follows that the Roman Catholic Church is entitled to the exclusive possession and occupancy of the property mentioned in the complaint.

The principal claim set up by the defense in its brief is that there existed, and still exists, in the barrio of Concepción a *cofradía*; that this *cofradía* was and is a juridical entity; that is constructed this church building and convent, has always had the possession thereof, and has always been and now is the owner thereof, and that among the defendants in this section is the *hermano mayor*, an officer of the *cofradía*, who is charged with the administration of its affairs.

The proof does not sustain this claim. No evidence of any kind was presented to show the formation of this alleged *cofradía* in the manner pointed out by the laws existing prior to the treaty of Paris. No document setting forth the organization of the *cofradía* or its purposes or objects was introduced, nor does the parol evidence presented at the trial show any of these things. A great many witnesses were examined both for the plaintiffs and for the defendants. With the exception of Angel Luna, the last witness for the defense, no one of them mentions the existence of this *cofradía*. Several of them were asked if there existed a *cofradía* or *hermandad* among the unbaptized Chinese in the town, but no one of the witnesses, even of the defendants, with the exception of Luna, testified to the existence of a *cofradía* such as is referred to in the brief of the appellants. The last witness presented by the defendants, Angel Luna, made use of the word "*cofradía*." The following questions were asked him and the following answers were given by him in reference thereto:

A. ¿Qué es lo que constituye esa *cofradía* que V. dice?—T. Creo que es la reunión de los vecinos entre ellos los hermanos mayores que son los que tienen la representación de los del barrio.

A. ¿Qué fundamento tiene V. para creer que esos representan los intereses del barrio de la Concepción?—T. Porque son los que me han nombrado *hermano mayor*.

A. ¿Quiénes eran los que le han nombrado á V. *hermano mayor*?—T. Don Martín Esguerra, Manuel Tuason, Lino Pérez, y varios vecinos que no puedo mencionarlos in este momento, más ó menos cincuenta vecinos, todos del barrio de la Concepción tomaron parte en la junta que me eligió en los cuales firmaron en el acto de mi nombramiento que no lo he traído aquí pero lo tengo en mi casa.

A. ¿Y á esta junta llama V. la *cofradía* el barrio de la Concepción?—T. Sí señor.

The memorandum to which he refers is dated the 2d day of October, 1902. It recites, among other things, that the church and convent were erected by the *hermanos mayores* or *cofradia*, but it will be noticed that this document was drawn up in October, 1902, after difficulties had arisen between the Roman Catholic Church, and its recitals are therefore entitled to no weight. The evidence does not show that there ever existed in the *barrio* any such organization as a *cofradia*.

All of the witnesses, however, both of the plaintiffs and of the defendants, testified that there was a person called the *hermano mayor* (eldest brother) and that he was charged with the supervision of the building, keeping the keys thereof, the collection of the contributions, the making of repairs, and the arrangements for the celebration of the *fiesta* of the *barrio*. As to the way in which he was elected the witnesses differ. Some of the witnesses for the defendants say he was elected by the people of the *barrio*; others that he was elected by the *ex-hermanos mayores*; others that he was elected by the principal contributors to the maintenance of the church; but in whatever way he was elected, it is very apparent from the evidence that the existence of such a functionary in no way proves the existence of a juridical entity, such as a *cofradia*, in which was based the legal title to this property. He was rather the representative of the *barrio* than the representative of a *cofradia*; in fact many of the witnesses for the witnesses testified that the church was owned by the *barrio*, represented by the *hermano mayor*. The necessity for some such person is apparent when it is considered that these buildings constituted a *vista* or *hermita* which had no resident priest. From time immemorial the *vista* or chapel had been administered by the parish priest of Tambobong, who did not reside, of course, in the *barrio*. There being no resident priest, it was necessary that some person resident in the *barrio* should be charged with the care of the buildings and in this case that person was called the *hermano mayor*.

The defendants in their answer set up the defense of *res adjudicata*, and alleged that in a former suit between the same parties concerning the possession of these buildings a final judgment had been rendered in favor of the defendants, which still remained in force. At the trial, however, they offered no evidence in support of these allegations of their answer.

The judgment of the court below is affirmed, with the costs of this instance against the defendants.

After the expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter let the record be remanded to the court below for proper action. So ordered.

Arellano, C. J. Torres, Mapa, Carson, and Tracey, J. J., concur.

Johnson, J., reserves his vote.

Judgment affirmed.

The CHAIRMAN. Gentlemen, we will begin the final consideration of this proposition on Monday next at 10 o'clock a. m. I hope that the members of the committee will be here as promptly as possible.

(At this point the committee adjourned until 10 o'clock a. m. of Monday, January 27, 1908.)

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

OF THE

HOUSE OF REPRESENTATIVES

ON

THE PROPOSITION TO AMEND THE ACT LIMITING THE HOURS OF SERVICE OF RAILWAY EMPLOYEES

WASHINGTON
GOVERNMENT PRINTING OFFICE

1908

HOURS OF SERVICE OF RAILWAY EMPLOYEES.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Wednesday, February 5, 1908.

The committee met at 10.30 a. m. for the purpose of a hearing on the question of an amendment to Public, No. 274.

The Chairman, Hon. W. P. Hepburn, presided.

The CHAIRMAN. This meeting has been called this morning for the purpose of hearing some gentlemen who are friendly to a change in one of the sections, Public, No. 274, an act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon. Mr. Gray will speak first for the gentlemen and will take charge of the order of the discussion. Mr. Gray will please state whom he represents.

STATEMENT OF MR. C. R. GRAY, REPRESENTING THE FRISCO LINES.

MR. GRAY. Mr. Chairman and gentlemen of the committee, we represent all of the railroads. The committee is made up mostly on geographical lines for the purpose of showing that interest in the matter is coincident with the entire country. This bill has the support of the railroads almost in its entirety. The gentlemen present to-day are as follows:

C. E. Schaff, vice-president New York Central.

D. Willard, second vice-president Chicago, Burlington and Quincy.

I. G. Rawn, vice-president Illinois Central Railroad.

H. U. Mudge, second vice-president Rock Island lines.

C. H. Wickersham, president Western Railroad of Alabama and Atlantic and West Florida.

W. A. Garrett, president Seaboard Air Line.

C. H. Ackert, vice-president Southern Railroad.

G. L. Petter, vice-president Baltimore and Ohio Railroad.

C. R. Gray, second vice-president Frisco lines.

The CHAIRMAN. Will you read, before you proceed further, the proposition that you think ought to be enacted into law?

MR. GRAY. The proposition is as follows [reading]:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of an act entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, be, and the same is hereby, amended as follows:

SECTION 1. That the last clause of section 2 of said act be, and the same is hereby repealed, and the following is enacted in lieu thereof:

"Provided further, That the Interstate Commerce Commission may, after full hearing and for good cause shown, under rules and regulations prescribed by said Commission, suspend the application of or extend the period within which a common carrier shall comply with the provisions of this proviso as to all or any of the offices of such carrier."

Sec. 2. That this act shall take effect and be in force from and after its passage.

Mr. RYAN. This is a proviso which says the first proviso may be suspended.

Mr. GRAY. That the first proviso is modified by the second proviso.

Mr. BARTLETT. Does it refer entirely to telegraph operators?

Mr. GRAY. The proviso applies to train dispatchers.

The CHAIRMAN. In what respect does it differ from the present provision?

Mr. GRAY. It differs in a material respect from the interpretation placed upon the law by the Interstate Commerce Commission. It is understood from the wording of the original law that carriers would have the right to present to the Interstate Commerce Commission, giving sufficient cause, for the suspension or extension of the law, so far as it affected the carrier or subdivision of the carrier, even down to one office, if necessary; but the interpretation placed upon this authority that we now have is that the Interstate Commerce Commission has no power to do anything but to have a hearing upon one particular office. In that respect the Interstate Commerce Commission must have an interminable job if it tried to do anything in the way of granting relief, and they have stated to us that they could not do it.

Mr. MANN. It would be ridiculous to expect the Interstate Commerce Commission to do that.

Mr. CUSHMAN. Is it your idea that there should be a power in the Commission to group in one class all the smaller offices?

Mr. GRAY. Our idea was that it would then be responsible to the Interstate Commerce Commission as to a certain method which we thought would be a fair one. After discussing this matter with the Interstate Commerce Commission, I think they would say that they would either have to exempt the carrier or to put it under the law.

Mr. RYAN. What is the purpose of this? Why do you want the law postponed?

Mr. GRAY. There are a number of reasons. The carriers contend that there has been created in the country an artificial scarcity of men required to put the law into effect; that in practically every other employment which the carriers use there is an effort made to educate and make competent the juniors. For instance, if we put a man on an engine as a fireman, he will get the sympathetic interest of the engineer, and through that association will become by his own method a qualified engineer. The same thing is true of a man on a passenger train or a freight train. He begins to get an education almost from that time from his superior, and he becomes, through that teaching, qualified to take the place of the engineer or the conductor, and subsequently to take any other position. In respect to the association of telegraph operators, however, they will not teach a person to become a telegraph operator. They have been for the last twenty years assiduously and carefully creating an artificial scarcity of telegraph operators.

The CHAIRMAN. What authority have you for making that assertion?

Mr. GRAY. We know it because we have seen it stated through the various journals and publications of the organizations, and we can show it for the information of the committee from one of their own officers. I have here a circular of the order of railroad telegraphers, dated St. Louis, Mo., June 10, 1907, over the names of the president and the grand secretary and treasurer.

The paper was inserted as follows:

THE ORDER OF RAILROAD TELEGRAPHERS,
St. Louis, Mo., June 10, 1907.

TO ALL OFFICERS AND MEMBERS.

DEAR SIRS AND BROTHERS: On account of the laws recently enacted by Congress and the various State legislatures regulating the hours of service for telegraphers, extraordinary efforts are being made by certain railroads in the matter of increasing the supply of telegraphers. In some instances they are offering small sums in cash to have our members teach boys the art of telegraphy; on other roads they are seeking to make it compulsory for our members to teach the art on penalty of dismissal from the service, and some are endeavoring to make the subject a matter of contract in our schedules.

As you are doubtless aware, thousands of competent telegraphers have left the business to follow other avocations on account of the scant pay, long hours, and the multiplicity of duties that have made the telegraph business an undesirable one to follow. A great number of these men would readily return to the railroad service if the conditions were made ordinarily pleasant and profitable.

At the present time a great number of the railroad companies are paying unskilled and ignorant immigrants better wages for their work than they are willing to pay well educated, skilled, and responsible citizens of the United States who have chosen telegraphy for their profession. If they were willing to pay anything like adequate compensation for the work done and the responsibilities assumed by the ordinary railroad telegrapher, they would have no difficulty in getting any number of desirable men to fill vacancies. While they consider from 14 to 17 cents per hour good wages they can not expect to have any great number of men making application for employment.

Therefore, you are urged to be mindful of your obligation and refrain from teaching telegraphy, except in accordance with the rules upon that subject. Strict attention should be paid to the provisions of your schedule in regard to telegraph students and the terms of our agreement with the employing companies should be lived up to faithfully.

The danger of accidents likely to be caused by having inexperienced boys tampering with telegraph instruments and train-signaling devices is sufficient reason for condemning such a practice. Many fatal and costly accidents have been caused by telegraph students in the past year, and in most cases the teacher suffered more than the student, for he usually lost his position.

The Order of Railroad Telegraphers was primarily instituted for the protection and advancement of those who were actually employed as railroad telegraphers, and its chief function to-day is to promote the welfare of those who are following the business. It has made wise provisions in regard to the teaching of telegraphy and set its seal of disapproval on the indiscriminate methods that prevailed many years ago and which some railroad officials seem now desirous of resurrecting. When it is shown that under fair conditions more telegraphers are actually needed, arrangements will be made calculated to supply the demand. While there is such a disparity in wages paid telegraphers as compared to other legitimate railroad employees, it is plainly apparent that there is no scarcity of telegraphers or the wages would be higher.

Recollect that we have been told repeatedly, and oftentimes very harshly, that "The law of supply and demand governs wages," and this at a time when we were quietly petitioning for a little more pay. The question naturally arises, "Will the telegraphers now lower their wages by increasing the supply of available telegraphers?"

I do not believe they will. If they do, it will be a suicidal act fraught with danger to the telegraphers, the railroads, and their employees as well as the traveling public.

The hours of service bills reduce the earning capacity of telegraphers because they prevent them from making extra pay for overtime. Most of the bills read that "Telegraphers will not be required or permitted to work more than eight hours out of any twenty-four." Under such a law, it would be illegal to make overtime, and the one who did it would be subject to a penalty. Therefore, your wages as a maximum are set by your wage scale after the law goes into effect, and if you help the companies in making a surplus of telegraphers, you will make it difficult to put your wages where they ought to be.

I believe that you will readily recognize the truth in these statements and cooperate with the order for its future welfare and advancement.

You are requested to write the undersigned upon the subject and answer the following questions to the best of your knowledge at your earliest convenience, being careful to mention your certificate and division number, as well as showing upon what road you are employed:

(1) How many experienced railroad telegraphers are there in your town or county, or employed on railroads, who are in other lines of business where a knowledge of telegraphy is not requisite?

(2) How many of them would accept service as railroad telegraphers at a minimum wage of \$80 per month for an eight-hour day?

(3) Give the correct initials and name and post-office address of all such telegraphers.

(4) How many telegraph students are there on your division and where are they located?

(5) Do you know of any railroad telegraphers out of employment? If so, furnish their names and addresses.

(6) How many stations or offices are there on your division where but one man is employed to transact the business of the company?

(7) How many additional telegraphers will be required on your railroad, division, or district when the Federal hours-of-service law becomes effective?

If this information is furnished promptly, it will be beneficial to the order and yourself in many ways.

The number of answers received will have considerable bearing upon the results; therefore each member should treat this as a personal communication and answer it as soon as possible.

Thanking you in advance, I am,

Yours, fraternally,

H. B. PERHAM.

President.

Attest:

L. W. QUICK,

Grand Secretary and Treasurer.

They say here: "Strict attention should be paid to the provisions of your schedule in regard to telegraph students, and terms of our agreement with the employing companies should be lived up to faithfully." In almost every schedule it is provided that the railroads will not require a telegrapher to teach other telegraphers. The agreement of the railroad with the Telegrapher's Association is that the railroads will not require telegraphers to teach others.

Mr. RYAN. Have you no other way of teaching operators excepting through that organization?

Mr. GRAY. Yes; and the railroads have gone to quite a length in an effort to provide telegraphers.

Mr. ESCH. What road besides the Pennsylvania has done that?

Mr. GRAY. A number of other railroads have paid student apprentices \$25 a month to go and learn telegraphy. These schools are only of the smallest benefit. In those schools they learn only the rudiments of telegraphy.

Mr. TOWNSEND. Who teaches them?

Mr. GRAY. That is the difficulty. We can not get them taught except as they pick it up. It is opposed by the organization of telegraphers. The student apprentice simply works this little instrument and learns as best he can under very adverse conditions.

The CHAIRMAN (to Mr. Ryan). Allow him to finish his statement.

Mr. RYAN. He said they were paying student telegraphers \$25 per month and there are cases where they only pay telegraphers \$25 per month.

Mr. GRAY. I have never known of a rate of wages of that kind for a telegrapher. There may be such, but I do not know of any on our lines. Our minimum is \$60 per month, but it runs up as high as \$80, \$85, and \$90. A telegrapher rarely ever enters the service with an

idea that telegraphy is going to be his vocation. He goes to a station and learns the business, and works there diligently with the hope of being promoted, and he is promoted as rapidly as his capacity can be shown.

Mr. TOWNSEND. What position does he have in view ultimately?

Mr. GRAY. Practically every member of the committee appearing before you to-day are telegraph operators. A man generally graduates into a train dispatcher, and from that he is promoted to a train-master, and from that to superintendent or general manager. He can aspire to any position in the railroad company.

Mr. BARTLETT. I think you read that paper for the purpose of showing that these telegraphers declined to teach others and therefore created an artificial scarcity of such employees.

Mr. GRAY. Yes, sir; they are moved to do that in order to increase the rate of compensation.

Mr. MANN. Do you claim that there is a great scarcity of telegraphers?

Mr. GRAY. I only state our experience. We have tried probably for three months to equip 40 miles of our line in Alabama, from Jasper to Birmingham, with enough operators for a block system; we offered \$60 per month, and we were never able to adequately man and put that piece of road in operation.

Mr. ESCH. It is claimed that by reason of the recent strike thousands and thousands of men are out of employment throughout the United States who are perfectly willing to accept positions by reason of this law, and it is therefore claimed there is no scarcity of telegraphers.

Mr. GRAY. We can show there are no men and the other gentlemen can say that there are plenty of men; and all we ask is that there shall be some competent tribunal that can ultimately pass upon the matter.

Mr. ADAMSON. Does not the question of price or wages make the trouble?

Mr. GRAY. I do not think so. These gentlemen request information upon the subject of how many telegraph operators are willing to work as railroad telegraphers at a minimum rate of \$80 per month for an eight-hour day. Those answering are requested to be careful to mention their certificate and division number as well as showing upon what road they are employed. If all of the men employed on railroads throughout the country were given \$80 per month it would amount to \$20,000,000 per annum to the railroads.

Mr. MANN. You mean that the increase in wages would amount to that?

Mr. GRAY. The increase in wages for the entire mileage of the United States.

Mr. RYAN. What is the average rate of pay, including the train dispatchers and the men along the line, on any big system in the United States?

Mr. GRAY. Most of the train dispatchers are paid high wages.

Mr. RYAN. And those outside of the train dispatchers are paid quite low wages.

Mr. TOWNSEND. Is not the trouble now that you do not pay wages enough? If you paid better wages, you could get plenty of operators.

Mr. GRAY. No, sir. We do not believe that we could. We say that we can not, and the gentlemen say we can. The law goes into operation on the 2d of March, and we are confronted with the condition that the only recognized order has created an artificial scarcity of men.

Mr. TOWNSEND. What reason have you for believing you will be compelled to pay \$80 per month?

Mr. GRAY. This circular goes on to say:

"You are requested to write the undersigned upon the subject and answer the following questions to the best of your knowledge and at your earliest convenience, being careful to mention your certificate and division number as well as showing upon what road you are employed:

"How many experienced railroad telegraphers are there in your town or county, or employed on railroads, who are in other lines of business where a knowledge of telegraphy is not requisite?

"How many of them would accept service as railroad telegraphers at a minimum rate of \$80 per month for an eight-hour day?

"Give the correct initials, name, and post-office address of all such telegraphers.

"How many telegraph students are there on your division, and where are they located?

"Do you know of any railroad telegraphers out of employment? If so, furnish their names and addresses."

Mr. TOWNSEND. Don't you think it would be better for you to get this information? Have you tried to get men to fill places in compliance with this law?

Mr. GRAY. That is the reason. This was fixed sixty days subsequent to the settlement of the telegraphers' strike. You will understand that the strike did not decrease the number, but it simply substituted one set of men for another.

Mr. TOWNSEND. Have you tried to get men?

Mr. GRAY. We have been trying for three years. We have not been able to get them.

Mr. TOWNSEND. Have you discovered, since the price has been raised to \$80, why it is that the men have not applied for employment? What is your experience in reference to that matter?

Mr. GRAY. I can not answer that directly. You can not tell why a man does not apply for employment. We know we can not secure men, even though we pay more than is paid in that neighborhood.

Mr. ESCH. After the enactment of the law, when you knew it was going into operation, why did you not make effort to secure a complement of men?

Mr. GRAY. We supposed that the matter would be settled by the Interstate Commerce Commission. We came here and asked them for a hearing and wanted to get them to make a ruling.

Mr. ESCH. When did you make that effort to get them to make a ruling?

Mr. GRAY. Last Monday.

Mr. RYAN. That effort was to get a postponement of the law.

Mr. GRAY. We wanted to get them to pass upon the matter.

Mr. STEVENS. There are quite a number of telegraphers scattered throughout the United States. What relation do the students who go into that employment bear to the telegrapher's association. Is it agreeable?

Mr. GRAY. When a man gets through one of those schools he is simply able to send and receive, but he does not understand the rudiments of railroad work and it is really essential that he should go in and learn the fundamental principle of handling train orders, signal orders, etc. We have been glad to take all of those who have been through schools.

Mr. STEVENS. When they have gone through the schools do the regular telegraphers get on with them?

Mr. GRAY. Well, the telegraphers papers are full of references to students here and there on different lines of railroads, and they are not spoken of with any favor.

Mr. STEVENS. Do they not get so they can do the work after a little coaching.

Mr. GRAY. They do not get sufficient instruction through schools to take up railroad work immediately.

Mr. TOWNSEND. I had supposed from my experience that there were apprentices at work learning telegraphic science, employed on railroads with the regular operators, the old men, so to speak, and that those students finally found employment with the railroad company.

Mr. GRAY. That is impossible so far as the organization is concerned. It is a powerful organization. If an apprentice belongs to this organization, he can not teach telegraphy.

Mr. ESCH. If an apprentice is put into an office, is that justification for the regular telegraphers, a man belonging to the organization, leaving?

Mr. GRAY. I could not say what his action would be in that case. Telegraphers do not teach apprentices. We have said that we would dismiss any official who attempted to prevail upon others to teach telegraphy. We may want a man to stay in the office and we can not keep him if he teaches telegraphy.

Mr. ESCH. Did that maintain prior to the recent strike?

Mr. GRAY. Yes, sir.

Mr. STEVENS. Why did you tie your own hands in that matter?

Mr. GRAY. We have been compelled to do a good many things we did not desire to do.

Mr. STEVENS. Suppose Congress and the Interstate Commerce Commission refuses to modify this law in the matter to which you refer, what would happen?

Mr. GRAY. So far as the lines that I represent is concerned, we would have to close a sufficient number of offices to enable us to equip the remaining offices with the proper number of men.

Mr. STEVENS. Would that affect the lines outside of the offices that were closed?

Mr. GRAY. It would affect the traffic of the country, as in that case undoubtedly we would have to go a great deal slower. It would restrict the dispatch of business.

Mr. STEVENS. Would it make any difference in the signaling of trains?

Mr. GRAY. In my opinion, a very material difference.

Mr. STEVENS. In what way?

Mr. GRAY. Adversely.

Mr. STEVENS. Why?

Mr. GRAY. For the reason, as I stated, closing the number of offices would affect the methods, the ways, and means of the train dispatcher in handling the trains. I want to say that every railroad of any magnitude in the country has for years been attempting to accomplish just what is contemplated on the title of this bill—to provide safeguards for its trains, passengers, and employees through safety appliances. These methods, our experience has proven, lie in the extension of the block signal, through the use of the telegraph operator, where the line is not able to bear the expense of the automatic signal. The knowledge of the law, prior to its operation, has already affected them adversely, because they have contemplated that they would be compelled to have additional expenses under this head. This bill makes provision for the installation of these appliances which experience shows to be sufficient.

Mr. ESCH. To what extent are railroads now operated by telephone?

Mr. GRAY. Upon a single track it is more or less of a success, but upon a double track the telephone is not put in with any success, but a block signal is provided.

Mr. ESCH. The Burlington road has established it.

Mr. GRAY. Yes, sir. On a portion of our road they have a double track.

Mr. ESCH. Do you find it efficient?

Mr. GRAY. The use of the telephone on a double track would not be approved by any competent board of railroad managers. On a single track it would have the protection of the block signal.

Mr. TOWNSEND. From the circular you have read it would be indicated that you can not get the men because they are going to charge \$80 per month?

Mr. GRAY. I will answer that in this way. Up to the 1st of October the railroads of the country looked at this matter with a different degree of concern from the way in which they look at it to-day. In other words, we have increased our expenses very materially in installing the block-signal system and now we have found an enormous slump in business.

Mr. STEVENS. Do not some of the roads have schools along their lines for instruction of the men?

Mr. GRAY. Yes, sir. Our establishment of the apprentice system was due to this very law.

Mr. STEVENS. How do the new men get along with the regular operators?

Mr. GRAY. It has been largely a matter of personal equation. One new man may be able to work there, but we may put in another fellow and he will not progress. We have only been able to employ 25 or 30 apprentices at any time on our entire line.

Mr. TOWNSEND. Suppose that you advertised to-day for telegraphers. Don't you think that you could get them?

Mr. GRAY. Candidly, I do not think we could.

Mr. TOWNSEND. You have not tried.

Mr. GRAY. We have not tried that method, because we have thought that railroad men needing employment would go to the nearest railroad point.

Mr. TOWNSEND. Judging from my experience—and I suppose some of the other Members have had a similar experience—we have been

receiving letters from various organizations of telegraphers claiming that they wanted employment. Their letters state that they have not even asked an increase in wages. You say it is largely a question of dispute, you claiming one thing and they claiming the other.

Mr. GRAY. We have officials who look up this information. We know there is a serious situation in securing men. Men are not applying in Texas, Oklahoma, nor Alabama; at least we have not been securing them. That is the thought that our committee had in asking for this legislation. We are up against this condition. We do not want the operation of telegraph offices interfered with, because we do not feel it would be in the interest of the traffic of the country.

Mr. STEVENS. You have tied your own hands by contract. You have established schools of telegraphy, as a good many other roads have. Can you not send those students to other roads where there is not much work?

Mr. GRAY. That is exactly our method.

Mr. STEVENS. Then will not the deficiency be gradually filled up, and will not you be able to get relief under the present law?

Mr. GRAY. No, sir; we can not get any relief under that law. If we go to the Interstate Commerce Commission, as we expect to do, after we have made a fair and honorable attempt to enforce this law, we have found that we can get no relief. We must either close our offices or violate the law; the latter of these we do not desire to do.

Mr. ADAMSON. From the language read the object seems to be to secure the names of all telegraphers who want jobs. Have you tried to get them from that source?

Mr. GRAY. No, sir; we do not know the source of their information. If I were a telegraph operator, I would take in just as many names as I thought they wanted. I would do that, putting myself in the place of the operator.

Mr. RYAN. Suppose they did send in the names. They have a right to protect themselves.

Mr. GRAY. We do not deal with any except our own employees.

Mr. RYAN. I do not believe you have made sufficient effort to secure men and avoid the appalling condition to which you refer, that men could not or will not learn telegraphy, and that they are asking \$80 per month. You have given the name of only one place, Jasper, Ala.

Mr. GRAY. The Illinois Central has had experience of the same kind. What we are endeavoring to show is that if the Commission does not agree to this, and they say that they have not been able to do it, we believe that we would be at a disadvantage under the present law. But we have got to do that. The burden is upon us. We must show that as a practical thing.

Mr. ESCH. Suppose we liberalize this provision as to every railroad system of the country; will it not have the tendency to work an extension of the time, just as was done in the case of the safety appliances?

Mr. GRAY. Yes, sir. That is what is contemplated. It is to be done under the rules and regulations of the Interstate Commerce Commission. That Commission is a busy one and it would be impracticable for them to handle all these things. It could only put this into effect gradually. We could say that we could use a certain number of operators now and later on a certain number more, and

it could go on this way until the object of the law has been attained. The main object will not be lost sight of.

Sooner or later the method of the operation of railroad trains is going to be inaugurated by this Congress, or by some subsequent Congress, and the safety-appliance law is going to be placed in the hands of the Interstate Commerce Commission. Safety appliances will not be applied here and there as the condition warrants and justifies. We are approaching that condition. Now, suppose a railroad with a length of 100 miles and with a strong traffic, under the rules of the Interstate Commerce Commission and the act of Congress, should install an automatic signal, admittedly the best modern method of safety. Now, we have done that. In that case the operator is absolutely disregarded as a matter of safety. He is convenient, but he is not absolutely necessary for safety. He simply carries out the orders of the train dispatcher. If he makes an error the block signal will catch it. The expense of installing the block signal is \$2,500 to \$3,000 a mile.

The responsibility for the safety of a train is removed from the operator. This is what we intend to accomplish on our line.

Mr. BARTLETT. I understood that the object of the act was to limit the hours of labor of telegraph operators.

Mr. GRAY. Yes, sir.

Mr. BARTLETT. It says in some cases it shall be nine hours a day and at certain times it shall run as high as seventeen hours a day. Is it provided that under the law you can keep a telegraph operator employed at certain stations an unlimited number of hours?

Mr. GRAY. The Commission makes rules and regulations as to that.

Mr. BARTLETT. How many hours a day do these men at these small offices work?

Mr. GRAY. The average is twelve hours. We divide the day into twenty-four hours. A man has an hour for dinner and an hour at midnight, and if he is required to work those hours he is paid for it.

Mr. BARTLETT. That would be at small offices where there is not much being done.

Mr. GRAY. Yes, sir.

Mr. BARTLETT. Do they not have a great deal to do besides the general telegraph business of the road?

Mr. GRAY. They handle the work of the railroad at all of the small offices.

Mr. BARTLETT. Taking into consideration the idea that you would continue offices as you do now, would the Commission have an opportunity to say whether or not you could do without certain operators?

Mr. GRAY. Our idea has not taken practical shape as yet, but we think that we will be able to present to the Commission practical reasons. It may be that we will run into this question of telegraphy. Then, again, conditions may arise that will enable us to do without this relief. We may be able to show, where we have a telegraph office operated, that we will close it for protective reasons. We may reach a point where we may want to keep in touch with the movement of two trains during the night, so that if something should happen and we would want to reach that place we can not do it unless we have a man on duty.

Mr. WANGER. Has your company filed an application to the Commission in this matter?

Mr. GRAY. We were completely dumfounded when we found there was no relief. We got up the data and we intended to ask the Interstate Commerce Commission to make an order affecting the carrier, just as they handle everything else. We thought that a complaint of poor management here and there could be investigated and reported upon and if necessary the order could be changed. We believe that as the condition would appear to them they could issue an order which would be automatic in its application.

Mr. RYAN. Is it not a fact that one of the sources of complaint is upon the part of the man in the small office who is telegrapher, baggagemaster, switchman, and everything—the man who receives only \$35 per month?

Mr. GRAY. We do not have any wages of that sort.

Mr. RYAN. Is not that the case with other roads?

Mr. GRAY. I do not think so.

Mr. RYAN. We have had that sort of testimony.

Mr. BARTLETT. I think the Commission has declined to consider anything except in case where each office was specified and the reasons given.

Mr. ADAMSON. You did not file any petition with the Commission.

Mr. GRAY. No, sir; I simply asked Mr. Knapp about it.

Mr. TOWNSEND. Did he suggest any method of relief?

Mr. GRAY. No, sir; he said that the Interstate Commerce Commission simply would construe the law.

Mr. WANGER. I assume that they did not declare that they would not obey the provision of the law as it related to this matter.

Mr. GRAY. Not in that sense. We were told finally that there was no relief.

Mr. WANGER. Perhaps you did not present the case as it might have been presented. I suppose that if this proposition be adopted it will be a matter for the consideration of the Commission; and if they should say that they would not consider it for any reason, you would still be in a hopeless condition.

Mr. GRAY. I admit that. We believe that we are entitled to relief. We believe that it is the intention of the law that we should have relief. The Interstate Commerce Commission say that under the express wording of the law they can not grant it.

Mr. ESCH. It is merely an opinion; not an adjudication of the Commission.

Mr. GRAY. It has come to us as official expression.

Mr. ESCH. Is it a matter of record?

Mr. GRAY. Yes, I suppose so. We went before them in a formal way and it was made a matter of record.

Mr. WANGER. Was the application in writing or was it made verbally?

Mr. GRAY. It was made verbally.

Mr. STEVENS. Don't you think that under this law the Interstate Commerce Commission has the right to make rules and regulations governing the matter?

Mr. GRAY. I think so. The Commission said that we got in at the eleventh hour and that they could not discuss it. We said that we did not think there was any question about our right for a relief under this law.

Mr. TOWNSEND. You expected to ask the Commission to take hold of it?

Mr. GRAY. Yes, sir. I thought we could show upon what we based our contention, but the Commission said that our contention was not good.

Mr. STEVENS. The Commission did not say it could not be done on general cases.

Mr. GRAY. Only as to one specific case.

Mr. STEVENS. They meant one office.

Mr. GRAY. Absolutely one.

Mr. KNOWLTON. They would have to take each individual office.

Mr. GRAY. Yes, sir.

Mr. ANDERSON. I think you would have to file a petition in each case.

Mr. GRAY. I can only say in reply to that that in the meantime we will suffer and the public will suffer.

Mr. STEVENS. What you wish to be understood as to this is that business conditions were such on the 1st of October that you expected by the 4th of March to be able to comply with requirements of this law, but now you are asking relief.

Mr. GRAY. The expense was not contemplated.

Mr. STEVENS. Expense which you did not contemplate at that time?

Mr. GRAY. We expected that if we could not fill the office we would have to close it. We wanted to present this condition.

Mr. STEVENS. On the 1st of October you thought you would probably have to apply to the Interstate Commerce Commission for relief?

Mr. GRAY. We never contemplated otherwise.

Mr. STEVENS. When did you first make application?

Mr. GRAY. I have been preparing data since early in the fall. I was afraid that in preparing the information I would be criticised and therefore I took the heaviest month for that reason. After passing through three-fourths of the year, I went back and took the month of August. I think some of the other roads took the month of October. Our heaviest month was August, and I took that month simply because I did not want to be subject to criticism.

Mr. STEVENS. You expected you would have to make some application, but you did not make an application until within a week or so.

Mr. GRAY. We discussed the matter among ourselves and we found that there was the impression that the matter would have to be presented in different ways. We tried to make it so that it would be along the lines of the practice of the Commission. It has not been easy, as you can conceive, to do anything in the last two or three years. We have ascertained more in the last three months than we formerly could in that many years.

Mr. STEVENS. Have you been able to operate your trains with a considerably less number of operators than formerly?

Mr. GRAY. We have done it.

Mr. STEVENS. Are not the operators on railroads compelled at small stations to handle commercial business—that of the Western Union Telegraph Company?

Mr. GRAY. They do commercial and railroad telegraphing.

Mr. BARTLETT. The discontinuance of these offices would not only work to the detriment of the telegraph operator as to his employment, but it would discommode the public.

Mr. GRAY. It would put the telegraph operator out of employment.

Mr. ADAMSON. You would move him away to another station?

Mr. GRAY. Yes, sir.

Mr. BARTLETT. It would put him out of employment at that station?

Mr. GRAY. Yes, sir; to that extent. It may be that our fears in regard to this matter are entirely unfounded, but if the law goes into effect and the Interstate Commerce Commission maintains their position, as they say they will do, we will have no recourse. If the railroad is not able to supply the men because it is not able to afford the expense, and the business goes further down, we will have no recourse but to close the office, and I submit that that is a serious condition. We do not want to be forced to do that. There ought to be some tribunal to which we could appeal.

Mr. TOWNSEND. What assurance have you or the country that you will maintain those offices?

Mr. GRAY. We may have to close them anyway. If we are not afforded this relief we may be compelled to close them. We ought to keep those offices going, regardless of where our business goes.

Mr. ADAMSON. I suppose that where a train operator works for you and the Western Union you both contribute to his salary.

Mr. GRAY. They contribute to his salary on the percentage paid upon the business done for the Western Union.

Mr. ADAMSON. That increases his income.

Mr. GRAY. Yes, sir.

Mr. RYAN. Where he does express messenger's business, is he paid for that also?

Mr. GRAY. If he is the only messenger; but in the majority of places there is an express agent.

Mr. WANGER. I think you referred to a school conducted by the Pennsylvania Railroad Company.

Mr. GRAY. I think some member of the committee referred to it.

Mr. WANGER. Do you know whether graduates of that school are competent railroad telegraphers?

Mr. GRAY. They must have experience. I imagine the results have been about like our own experience.

Mr. WANGER. You referred to schools not connected with the railroads of the country. Is it not fair to assume that the railroad schools would teach railroad business to their students?

Mr. GRAY. Yes, sir; certainly, as time progresses, we are going to utilize every method on earth of encouraging the learning of telegraphy.

Mr. ESCH. If your telegraph staff can be used on the block-signal system, would it afford relief to the operators on other parts of the line where they would have telegraph instruments?

Mr. GRAY. It would operate as a great relief upon those roads where they have a considerable portion of block signal.

Mr. WANGER. Why is the telephone safe on a double track and unsafe on a single track?

Mr. GRAY. I would say that where we have a block-signal protection there is not so much opportunity for a figure or a word being

misconstrued. No railroad would send train orders by telephone. If we can not advance a train by the block signal, we can not let it go. The operator is a matter of convenience, but he is not a matter of safety. The signal will be there; and if an operator misunderstands an order, there is nothing worse caused than delay.

Mr. BARTLETT. In these small offices, where you only have one operator, do you keep him on day and night? How do you propose to ask the Commission to remedy that situation where there is only one man employed to do the telegraphing?

Mr. GRAY. We take no exception to the law.

Mr. BARTLETT. How did you employ the operator before this law went into effect?

Mr. GRAY. His time of service is based on twelve hours' work, including time for meals. If he works overtime he is paid.

Mr. BARTLETT. Where you have only one man do you work him all night?

Mr. GRAY. Those requirements are very slight. If there is a necessity for night work, two men are employed.

Mr. BARTLETT. So that one man will work in the daytime and one will work at night?

Mr. GRAY. Yes, sir.

Mr. WANGER. You have no desire to work men overtime?

Mr. GRAY. No, sir; we live up to the law. Instead of calling him, as we probably might, we let him alone and the train will probably be delayed.

Mr. WANGER. The law provides for further exemption in case of emergency.

Mr. GRAY. Yes, sir. The telegraph operators do not object to the overtime feature. It is the railroad company that usually holds them down to the limit, because when they are kept overtime it increases the expense.

Mr. STEVENS. Overtime is paid for at a greater rate?

Mr. GRAY. They are never paid at a less rate.

The CHAIRMAN. Have you any trouble in securing men for additional hours with these wages?

Mr. GRAY. No, sir.

The CHAIRMAN. What is the rule? Are they willing to work overtime for overtime pay?

Mr. GRAY. Yes, sir; that is my experience.

The CHAIRMAN. What is the ordinary overtime payment?

Mr. GRAY. Twenty-five cents per hour.

Mr. WANGER. Extra?

Mr. GRAY. Yes, sir.

Mr. CUSHMAN. Wherein does that add to the safety of the traveling public? Is the traveling public better protected if the men are paid less?

Mr. GRAY. No, sir. I just made that answer to the gentleman's question. The block signal is there as a danger signal all the time.

Mr. CUSHMAN. It was asserted when this matter was up for consideration that its enactment would be a matter of safety to the traveling public by reason of having relief from long hours. If they serve extra hours in order to get more pay, wherein is the public—traveling public—benefited?

Mr. GRAY. We can not do that under the law now. There is no overtime paid at a station operated continuously, because one man relieves the other. In some cases one man will "sub" for the other.

The CHAIRMAN. Is overtime service voluntary on the part of the employee or is it compulsory?

Mr. GRAY. It is agreed, practically, at least by implication, as to block-signal operation, that there is wages paid for overtime beyond a specified hour.

The CHAIRMAN. Does the employee seek the overtime work for the overtime pay?

Mr. GRAY. I can not say that he does. I do not know that. I know that in a great many cases it is very gladly done.

Mr. RYAN. In some offices that are continually operated, where there is only one man employed, it often happens that a man is required to be on duty because there is no relief for him. Is that man allowed extra pay?

Mr. GRAY. In that case he is exempted.

Mr. RYAN. Where you have only one man and he has to perform additional duty, such as occurs when there is excursion business and in the case of special things that require him to be on duty, what is done in that case?

Mr. GRAY. When the law goes into effect we will simply have to close the office.

Mr. RYAN. That can be done only three days in a week.

Mr. GRAY. We would close the office after the time specified elapses.

Mr. HUBBARD. Have you put on paper the amendment which you want to the existing law?

Mr. GRAY. Yes, sir; it is here and will be in the record.

Mr. HUBBARD. Will you file a copy of the order made by the Commission? I understand that the former order was entered.

Mr. GRAY. I can not say that it was formally entered.

Mr. HUBBARD. Can you get a written statement from the Commission as to the action taken on your application?

Mr. GRAY. It occurred to me that perhaps this committee would call upon the Commission for that. I did not care to ask that. I would be glad to have it done if the committee desires it.

I would like to ask Mr. Wickersham to address the committee at this point.

FEBRUARY 5.

STATEMENT OF MR. C. H. WICKERSHAM.

Mr. Chairman and gentlemen of the committee, I think that the statement of Mr. Gray, in reply to some questions asked, makes it proper for me to recite to the committee some of the duties of an agent, a telegraph operator, and a train dispatcher in explanation of the feeling that seems to be prevalent in the minds of some gentlemen as to the large responsibility of a telegraph operator and the belief that such duties are much greater than they really are in actual practice. I may be able to throw a little light on the question as to why it might be best to close some of the minor offices without any real danger to the movement of trains.

It may or may not be generally understood by the members of this committee as to the *modus operandi* in handling trains on modern railroads not equipped with the block signal. As a rule north or east bound trains have assigned the right of track according to the classification.

Passenger trains north or east bound have the absolute right of track, regardless of the character of the trains going in the opposite direction. In other words, should the wires all go down through sleet or other catastrophe, the trains would move east or north, but the south-bound trains would have to remain on the side track until the trains that were supposed to meet had passed. If the wires are working and anything should happen to the superior train, the inferior train going in the opposite direction would necessarily be delayed until the train dispatcher released it.

Take stations A, B, C, D. A passenger train may leave station A at a certain hour and a passenger train may leave station D in the opposite direction. The train with the right of way leaving station A would proceed regardless of that train; but the inferior train, if they had a meeting point at station C, when it reached station C, if the superior train had not arrived there, it would have to wait there indefinitely.

Say a train had left station A, where they might have a hot box or a derailment, and the operator at station B would read that that delay was taking place and the train would probably be delayed one hour. He would send a message to the moving train telling it to meet and pass the inferior train at station B. When that train received that order from the train dispatcher it would move on up and avoid that long delay, meeting at station B. It would reserve the right up to that point. If there was no operator at station C, or no telegraph office, that inferior train would have to wait indefinitely or until the superior train was in position to move, which would make each and every delay more, no doubt, and the passengers would be tired.

It would not necessarily mean danger. It would mean only a long delay. That operator who might be stationed at station B, unless he was paying particular attention to the instrument, would know nothing whatever about the other train being delayed; but the train dispatcher would. The operator may have been uptown and when he came to the office would find the train dispatcher. He would answer the train dispatcher, and then the train dispatcher would give him that order.

Now, that operator is simply acting mechanically; in other words, it would be just as if one of you gentlemen had an important measure to dictate which might have required weeks and months of great study. You might call in your stenographer and dictate it and in a few minutes the stenographer would hand you the transcript. That work might be more or less mechanical. It does not require a great strain to take down the dictation.

All the operator has to do is to put down what the train dispatcher tells him. The board is always out as a danger signal, and no train can pass there until he pulls down that board. He may have received the order, and his attention might have been taken from it, so that he could go and perform some other duty. He does not necessarily keep that particular order on his mind all the time, because the board is

standing out there as an absolute direction, and when a train approaches the conductor comes and says to the operator, "Have you anything for me?" The operator will say, "I have a train order for you." He hands the order to the conductor, and is then absolutely relieved from any further responsibility. He then pulls the board down and the train proceeds.

I only go into this to show that this intense tension that the operator is supposed to give to the movement of trains does not require that great concentration of thought which it is supposed to do. It is mechanical, and unless there is willful carelessness there is no necessity to get into trouble.

Mr. ESCH. That does not release the liability of his making an error in a figure.

Mr. WICKERSHAM. That is repeated.

Mr. STEVENS. There may be an error caused by the wording of the transcript, which may not be understood, in the orders handed to the conductor.

Mr. WICKERSHAM. I think that is simply criminal carelessness. We can not guard against that. We do everything to employ competent people, but we can not be right there to tell them what to do. In employing an operator, he is put through an examination, and his character is looked into. His past history is scrutinized to see whether he is competent and whether or not he is a drinking man. We have been doing everything we can to get schools for this class of men. That is the great trouble in taking a man from a telegraph school. As a rule, all that they learn there is how to receive and send a telegram. A man, to be a competent telegraph operator, must be fairly familiar with the rules of the railroad company and must understand more or less about moving trains. He must understand something about the right of trains, and must be versed in the operation of a railroad. The only proper way to learn that is to get into the actual railroad atmosphere. It is something that must be picked up by actual experience. You can not learn it from books.

I am a telegraph operator and a train dispatcher, and I have been through all the lines in that branch of telegraphing and railroading, and I know just what a telegraph operator has to do.

Mr. HUBBARD. Does any railroad company maintaining a school include that sort of training in its course of instruction?

Mr. WICKERSHAM. There may be some. The general average of the schools advertised pay particular attention to getting a man so that he becomes a proficient operator, that he can go into the commercial branch of the business.

Mr. HUBBARD. Does not the railroad school attempt to familiarize a man with the movement of trains?

Mr. WICKERSHAM. No, sir. We have two schools in Atlanta.

Mr. HUBBARD. Are they maintained by the railroad companies?

Mr. WICKERSHAM. No, sir; although we endeavor to get efficient men, in order to do so we have to take a man in as a helper.

Mr. HUBBARD. The school could not give him that instruction?

Mr. WICKERSHAM. No; unless there was a practical railroad man to instruct him. It is better to put him on the railroad and instruct him there on pay.

Mr. ADAMSON. That is a post-graduate course?

Mr. WICKERSHAM. Yes, sir. My only object was to try to direct your attention to the fact that this terrific strain which seems to be in the minds of some as to the duties of a train operator is not such as it is thought to be. There are other branches of the service where the responsibility is much greater. I believe the section foreman has a greater responsibility than the telegraph operator.

Mr. KNOWLTON. The chief responsibility is in the train dispatcher's office?

Mr. WICKERSHAM. The train dispatcher is the head, the heart, and the soul of the operation of a railroad.

Mr. ESCH. Does not this bill provide long hours for the train dispatcher?

Mr. WICKERSHAM. I do not know of any railroad that overworks the train dispatchers. They appreciate that there is where the responsibility rests. No railroad company places any particular strain on an operator. It never made me gray-haired.

Mr. RYAN. I think that the telegraph operators in my section work twelve hours.

Mr. WICKERSHAM. I have worked fifteen and eighteen hours, all day and night, but the average telegraph operator—and I was no exception to the rule—do not necessarily go to bed after their day's work. I have known some of them to be especially active at 2 or 3 o'clock in the morning.

Mr. RYAN. I shall have to defend them against that assertion as to my section of the country.

Mr. WICKERSHAM. I speak from my experience on the Pennsylvania road. I have no reference to the South.

(At 12 m. the committee took a recess until 2 p. m.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Wednesday, February 5, 1908.

AFTERNOON SESSION.

The committee met at 2 o'clock p. m., pursuant to the taking of recess, Hon. William P. Hepburn (chairman) in the chair.

STATEMENT OF MR. DANIEL WILLARD.

The CHAIRMAN. I think that the statement the committee would prefer to hear you upon, Mr. Willard, would relate to the difficulty or impossibility of securing the needed telegraphers under this law; what has been done in that direction, what has been done in opposition, or in restraint of that success by any interested parties, and the cost that it will be to the public or to the road in case, under the present conditions, you comply with this law.

Mr. WILLARD. I thank you for your suggestion, Mr. Chairman, and I will try to follow in that direction. I would not like to have it thought, nor do I think, that the committee that is here is here to-day opposing the law. The law has been passed, but it seemed to us before we came here, and that belief seemed to be confirmed by what we listened to on the part of this Commission this morning, that it was clearly the intent of the framers of the law to provide for a cer-

tain review, and it also seemed clear that the Interstate Commerce Commission, which body was to grant the review, does not feel that the law does the thing that it was intended to do, and our mission here is to see if by interpretation or by amendment it could not be arranged so that the law would do the thing that really it was intended to do as to that particular point

In reply to that inquiry, I will confine my remarks only to the Burlington road. We have about 2,000 operators employed at the present time. We have between 500 and 600 offices, day and night. Some of those, the train dispatchers' offices and the important relay points, are now equipped with three men working eight-hour tricks, but the great majority of them are working ten hours, as they have done in the past. When this law becomes effective, of course, it means, if no relief is granted by the Interstate Commerce Commission or in any other way, that we will be obliged to put on three men at all day and night offices where now only two are employed. We estimate that that will take, if we keep all of our present offices open, something like 500 additional men. We are very much of the belief that it will be, if not impossible, extremely difficult at least to get men to fill those positions, and we are planning to obtain the additional men by closing such other offices as can be closed, either day offices or day and night offices, and the men so relieved we will put in places where day and night offices must be retained, and where only two men are employed at the present time. Our reason for believing that it will be difficult to do that thing is because we have had difficulty in the past, at times, in manning offices which we now have open.

The question was asked this morning, what is the average wage paid operators to-day? I am glad that I can answer that for the Burlington road. I have the information here. Leaving out relay offices and leaving out dispatchers' offices, the average wage paid the operators we have in our employ to-day east and west of the Missouri River—and I mention that because there is a different wage scale east and west of the river on the Burlington system—is \$60 a month. Including operators at relay offices and not train dispatchers the average wage is \$62 a month. Of course that being the average it means there are some offices paid less than that. The lowest wage paid on the Burlington to-day is \$45 a month, and we have only three offices at that wage. As I said, we have had great difficulty in the last year in getting telegraph operators at times to keep open the offices which we now have, and on account of that we have not expanded, as rapidly as we would have expanded, the block system.

We had arranged to equip our entire line from Chicago to Denver with manually controlled blocks. This arrangement was made last winter, before the passage of this law. We have the machinery purchased and in our stock. We have inaugurated about one-half of the distance arranged for in our plans, but the last 500 or 600 miles has not been equipped with the instruments, because it would mean, wherever the instruments are installed, the continuous operation of that office day and night, whether there were any other duties to be done besides that of operating and blocking trains or not; and on the west end of the Burlington system there are many places where operators are employed, where offices are open day and night, and the

operator has no other duties whatever than that of a mere telegraph operator, because we have no station open at that place. We had expected when we originally considered the plan that we would be able to open day and night offices with the employment of two men in all, but when it became necessary to employ three men and we realized the difficulty which we might experience in getting three men, we decided that we would not install that system until we had seen how this matter worked out, and so this has been held up, and that is the reason, briefly, why we expect we will have much difficulty in obtaining a large number of additional men at a time when all other railroads are striving at the same time to get additional men also.

As to the artificial limitation of operators, I do not know that I can add anything to what was said this morning. I believe it is well understood that for many years the Order of Railway Telegraphers has endeavored as much as possible to limit the education of operators in offices. I believe that it is a fact that on most roads the companies have been forced to yield conditions in their schedules with their operators wherein they have agreed not to require telegraphers to teach students. I believe it is a fact that the teaching of students is in violation of the tenets of the order, and while I am not conversant with the interior rules of the order, I reach my conclusion because of the difficulty we have in getting our agents to teach students, because of the circular that was referred to at this morning's meeting, and also because of the frequent and continued utterances in the magazine that is the official organ of the Order of Railway Telegraphers that the order is not changed. If no relief is granted on the 4th of March, such as we hope may be granted, we will, of course, comply with the law—there is no doubt about that—and under the existing circumstances we will be able to comply with it perhaps with less difficulty than would have been the case two or three months ago, and for the reasons mentioned this morning. The number of trains we are running now is so much less than it was three months ago that we can close offices that we could not well have closed at that time.

We hope to be able, if we are obliged to comply with the law as it stands, to close enough offices to release 300 to 400 men where they are now employed and put them in other places. While it would take something over 500 men, if we have to hire new men and keep all offices open, we will be able to release 300 to 400 men where they are now employed, because the offices where they are now will not exist. In that way we will comply with the law. We think it is unfortunate in this way, because that action, which we think will be forced upon us, will interfere with the prompt movement of trains, it will interfere with the efficiency of the railroad, and without doubt it will operate to some extent at least to interfere with the prompt movement of traffic; and, then, there is one other feature that we can not overlook, which is that at many of our lighter stations there are small communities, and they depend upon our railroad operator for such commercial telegraphing as may be necessary, our man acting also as the agent for the Western Union. The commercial business at many of those smaller stations would not justify the maintenance of a separate office, so that if we close the railroad office and are able to do without and handle our own business in that way and put the operator elsewhere, it will deprive those communities of the service they have had in the past.

Mr. STEVENS. Have you any objection to my asking you a question at this point?

Mr. WILLARD. No, sir.

Mr. STEVENS. Your road operates from the Lakes to the Rocky Mountains, if I remember correctly?

Mr. WILLARD. Yes, sir.

Mr. STEVENS. Nearly all of the States through which you operate have railroad commissions?

Mr. WILLARD. I think they have.

Mr. STEVENS. What action will these commissions take if you close those offices?

Mr. WILLARD. I can only answer in this way: The commission in Nebraska, foreseeing what might occur, issued an order last week, of which I received a copy, that no station in the State could be closed or in any way changed without permission from the State commission. I have not talked with our local officers about that, but my own opinion would be that if we are obliged to maintain an agent at the smaller offices to sell tickets and handle freight, if it should develop that the commission has the right to do that particular thing, it would not follow necessarily that we would keep an operator there, but we could employ someone to bill freight and sell tickets who was not a telegraph operator, and we should probably work that out on that basis. I expect we would do that; I do not know.

Just one other matter. This morning reference was made to the practice on the Burlington road with reference to the use of the telephone for moving trains. It is true that we have substituted the telephone for the telegraph in some instances for the train movements. How far we will go with that we are not quite able to tell yet. We have 150 miles of double-track road working in that way, and satisfactorily. We propose immediately to extend it over some of our single track where the conditions are such that we think we can do so with perfect safety, and if that works as we expect we shall continue and substitute the telephone for the telegraph as rapidly as possible. Of course the telephone operator will come under the operation of this law, and he will not be a skilled person in any respect, and we will probably be able to fill those places with the disabled persons in our service; but the extension of the telephone is going to be a difficult matter, and we can not extend it all at once. We have moved as rapidly as we could.

I have not anything more to say, unless you have some questions to ask me.

Mr. STEVENS. Has the Burlington road conducted any school for the instruction of telegraph operators?

Mr. WILLARD. Yes; in a small way.

Mr. STEVENS. Where?

Mr. WILLARD. I think at Aurora, and I will say this for the Burlington road, that it so happens that the schedule we have with our operators makes no reference whatever to the teaching of students, but it was tacitly understood that that practice will not be objected to on their part. It has been objected to, but I imagine that we have been able to develop more students in our telegraph offices than is generally the case.

Mr. STEVENS. Please tell us about your school at Aurora. When did you start it, and what do you do?

Mr. WILLARD. I want to qualify that. We arranged to start a school there in the summer, but whether we did or not I must confess I do not know, and I can not tell you anything about it. I can only tell you what we planned to do, and it was handled by the general manager.

Mr. STEVENS. Do you know anything about the conditions of the schools of the Northern Pacific and the Great Northern roads?

Mr. WILLARD. No, sir.

Mr. ESCH. What attitude has the Wisconsin commission taken on the eight-hour law with reference to operators.

Mr. WILLARD. I can not answer that. Our line is not so extensive in Wisconsin. We have closed certain stations, and in one particular case we had instruction from the commission to open it again. I think their attitude will be to prevent as far as possible the closing of any office that is now open.

Mr. ESCH. I understood that would be their attitude.

Mr. WILLARD. I understand that will be it. If that is all, Mr. Chairman, I am very much obliged.

Mr. GRAY. As apropos of the question you ask as to experience in the employment of additional men, I would like to have you hear from Mr. Rawn, of the Illinois Central.

STATEMENT OF MR. I. G. RAWN.

Mr. RAWN. Mr. Chairman, it is not the purpose of the committee representing the railroads to unnecessarily detain your committee or take up your valuable time, and I do not know that very much more can be said on the subject than has already been stated. Therefore I shall have but a very few words to say on the subject. It would seem to me that the purpose and intent of the law is all that there is to be considered. There was an evident intent upon the part of Congress to pass a law to conserve the safety of employees and travelers upon railroads, and it seems to me that that is the only thought really in connection with this, and the proper application of the law. It is not the purpose of the railroads, at least of the committee representing the railroads here, to in any respect question the law. We are only here for the simple purpose of explaining to this committee that the interpretation put upon the present law by the Interstate Commerce Commission is such that when Congress adjourns it leaves us without a tribunal to pass upon the merits or demerits of the cases which may be brought into question under this law. It seems to us a very unusual condition. It seems to us that the intent of the law was to give to the Interstate Commerce Commission a certain authority of review.

Evidently those having charge of that bill considered that a review was essential under that law the same as all others, and we were very much surprised, as has been stated to you, to find that that Commission, the tribunal mentioned in the law, has no province; at least their construction is such that the authority which they consider delegated to them makes their authority useless. They have none at all. They could not hear and dispose of the individual cases, construing it as they construe it to mean the individual stations—construing the particular case as an individual station, they could not hear and dis-

pose of the cases of the different railroads within a period of years. Therefore, if there was any intent, and it is fair to assume that there was, upon the part of Congress to delegate to the Interstate Commerce Commission any authority, that has failed, based upon the interpretation of the Interstate Commerce Commission. We do not think the Interstate Commerce Commission want to evade any responsibility. We have not been impressed that they want to evade any responsibility, but they very candidly give us their interpretation of the law, and that interpretation means, to reiterate, that they have no jurisdiction, effective or practical.

I assume all persons who have had to do with this law, with the making of it, or who were interested in the defects, are only interested to the extent of its becoming effective in the direction indicated—namely, to promote safety. If this is left open without a court of competent jurisdiction to construe the merits and demerits of this case, I beg to say to you people, and without fear of successful contradiction, that there will be a great deficiency in the results obtained in the direction of promoting safety. I do not believe that the railroad companies are prepared to say that there should not be any nine-hour offices. I will not say that. On the contrary, we are perfectly willing that any office that ought to be made a nine-hour office should be made a nine-hour office. What should not be nine hours should be regulated by some one in authority under this law. It is not for the railroads to say—we are not asking that we be given the authority to say—what we shall or shall not do under that law, but we are asking that the law be in such shape that we can discuss the merits and demerits of this proposition with some one in authority, that is all; and it seems to us we are not attacking the law or the merits of the law; we are not attacking the fundamental principles of it; we are simply asking for a court of jurisdiction.

In connection with the block-system matter, I would like to say that I have had some recent experience with it. During the period of the past four years the line I represent, the Illinois Central, had established on single-track lines the manual-control block for an aggregate distance of 800 miles. Prior to four years ago we had no manual-controlled block on single track. We had some automatically controlled block on double track, but the manual-controlled block required the use of telegraph operators. Over the territory of 800 miles it required the employment of 192 additional operators. Those offices are worked continually the twenty-four hours. I merely mention that incidentally. The increased cost was \$132,000 a year. We felt perfectly warranted in incurring that additional pay-roll cost because of the additional safety surrounding the operation of trains. That means something. That means to conserve and promote the safety of employees and travelers. We have a record of a number of collisions that would have occurred had it not been for this manually controlled block.

Mr. ESCH. So that it was a good economic investment?

Mr. RAWN. Absolutely so; and we have had in mind the extension of that, if you please. We have in mind plans made for the extension over thirty-seven districts, aggregating about 250 miles, and we have held it in abeyance for the past few months because the introduction of the third man, or dividing up the twenty-four hours into three forces, creates a very decidedly increased cost, and in some of that

territory without warrant, we think; but in thinking that we beg that we be given an opportunity to state our case to some court of jurisdiction, that is all. There are a great many of these offices in the block district that I speak of, located at a sidetrack, without any village or any habitations around them except a few farmhouses, with no business whatever excepting blocking of trains, and they are put in as a safety proposition. We think some court of jurisdiction should pass upon the equity, as to whether the men employed there are entitled to work eight hours or twelve hours. They are now working twelve hours; that is, twelve hours is their requirement, exclusive of the meal hours, day and night. By reason of working the meal hour at noon and midnight they are paid overtime.

Mr. WANGER. What proportion of the 192 extra men put on to the operation of this system are on eight hours and what proportion are on twelve hours?

Mr. RAWN. They are all on twelve hours; none of them are on eight hours. The shorter hours, shorter than twelve, worked by the telegraphers on the system I represent are in the very heavy offices, what are called the relay offices. They are on nine and ten hours' service, but other than that the general rule is the twelve-hour service, exclusive of one hour for meals—regular eleven-hour service.

Mr. RYAN. In the event of your getting no relief here, as asked, do you anticipate any trouble in filling the places, in getting telegraphers?

Mr. RAWN. I would think so.

Mr. RYAN. What, if anything, have you done in that direction?

Mr. RAWN. We have no telegraph schools, but we have now for the past ten months, I should think, been taking more or less students from the telegraph schools and placing them in our offices as helpers at a salary of \$25 a month, and in that way we have gotten some additional men, but no surplus, because we have had difficulty at times even then in filling our offices. I want to state as an individual opinion, if you please, without the knowledge of my associates on this committee, I think it would be possible for the railroads to-day to get some additional operator, because of the depressed condition of business in the country, but I think that the number would be very insignificant in comparison with the total number required if the railroads of this country were to keep open their present offices and comply with the law literally.

Mr. STEVENS. How long does it take you to make a good railroad operator out of a good commercial operator; that is, for him to learn the signals and the railroad technique?

Mr. RAWN. Not a great while. Commercial operators would learn within a short period in offices where there was straight telegraph business in handling signals. It would not take a great while.

Mr. WANGER. What do you mean by a great while?

Mr. RAWN. If we would hire a competent commercial telegrapher he would be competent in a few weeks—ten days or two weeks—to operate signals and things of that kind—handle train orders.

Mr. ESCH. As the result of the commercial telegraphers' strike, were there not quite a number of telegraphers left without employment?

Mr. RAWN. Yes, sir.

Mr. ESCH. Would they become available for your purposes?

Mr. RAWN. I would think so. That is what I have in mind, if you please, in saying that I think there is some supply now. I do not know but it would be competent for me to say that the result of the best investigation we have been able to make shows a surplus in that direction of possibly 2,500 to 3,000 men, while the estimates made by this committee of the operators needed to operate all of the offices in the United States as now operated, and comply with the law, would require 15,000 additional men. That was one reason why I said a moment ago the railroads have no desire to ask the members to abrogate this law. We simply want an opportunity to start it, and if we have a competent review, let us advance step by step and determine, if you please, when we get to the proper point.

Mr. STEVENS. Now, let me ask you a question and put on record exactly what the situation is. If there is no change in the time of putting this law into effect, how many small telegraph stations do you estimate would be closed on your line by the lack of operators after you have exhausted all reasonable efforts to get them?

Mr. RAWN. I would suppose we would close 150 offices.

Mr. ESCH. How many miles of road belong to your system?

Mr. RAWN. Fifty-six thousand.

Mr. STEVENS. If you made a complaint to the Interstate Commerce Commission setting forth particularly each one of those offices, and giving as a reason for discontinuing the lack of operators, and showing your efforts to obtain them, if they were reasonable and sufficient, do you not think that would come within the language of that proviso that each case would be a particular case, although they would be joined together in one petition, and that the Commission would have the right to investigate each case upon the facts as to each case and decide each case as to the facts of each case, although they might be joined in one application? Is not that a reasonable view of that proviso?

Mr. RAWN. That is exactly the view that the railroad operating people had prior to our coming to Washington.

Mr. STEVENS. And that has been denied by the Commission, has it?

Mr. RAWN. That has been denied by the Commission. But, as I wanted to say a moment ago, it is not proper for me to make an apology for this Commission or anybody else, and we do not want to convey the idea that we have not been treated with consideration.

Mr. STEVENS. But I want to know what the situation is.

Mr. RAWN. The Commission has stated to this committee that their interpretation of that act is that they have no jurisdiction beyond that of investigating each individual station.

Mr. STEVENS. My question included each individual station set out by itself.

Mr. RAWN. But as I followed you, while they might investigate each individual station, yet it is a collective matter after all.

Mr. STEVENS. No; my statement was this: You said 150 stations, for example, would have to be discontinued. You would set out the names of 150 stations on your system, giving the facts in general, that you had exhausted reasonable efforts to obtain operators.

Mr. RAWN. Or for any other reason?

Mr. STEVENS. Yes; and that the same reason applied to those 150 stations, and all of the facts that applied to one station applied to

all of the 150 stations; you would set out all of those facts and proof of those facts as to each one of those 150 stations, naming them in your petition. Does the Commission maintain that they could not entertain an application of that kind?

Mr. RAWN. That is my understanding; and therefore the committee representing the railroads, if you please, are here simply asking that the Commission be given authority which will enable them to do just what you have stated. That is all we are asking.

Mr. CUSHMAN. In making such an application, in grouping these offices together in the manner suggested by the gentleman from Minnesota, is it not probable that there would be, in addition to the inability on the part of the railroad to get sufficient operators, a further reason in the case of certain stations, like that station you spoke of a moment ago, where you would not desire or would not need but two operators?

Mr. RAWN. I understood the gentleman from Minnesota simply used the lack of operators as illustrative, and that it was simply that the railroad would present a petition pertaining to a number of stations where the conditions were similar, regardless of what those conditions might be. That was my understanding.

Mr. STEVENS. That is right.

Mr. ESCH. How long will it take to put a young man who is apprenticed to one of your operators in a station in condition so that he can take the responsibility of a station?

Mr. RAWN. I would say that it requires, say, an average of eight months for the average bright young man to learn telegraphy and become competent to run an ordinary or a small railroad office. If he is a bright young man and has the opportunity of being in and about the station, and therefore of necessity getting railroad experience, at the expiration of eight months he would be competent to take a small office.

Mr. STEVENS. Does your company have a contract which precludes the possibility of your operators giving instruction to apprentices?

Mr. RAWN. Yes, sir; in effect. We have a contract with the telegraphers by which we agree not to require the operators to teach telegraphy.

Mr. RYAN. Do you think the telegraphers' organization have combined or taken any other means to prevent the enforcement of this law by the railroads.

Mr. RAWN. Not that I know of.

Mr. WANGER. What would you think of a proposition to amend the law regarding these day and night offices in the United States requiring you to put this in effect on the 4th of March, so that it should go into effect in a certain percentage of them at that time, a year later, or six months later a larger number, and so on until it covered the 150 stations?

Mr. RAWN. I would say that that would be immensely preferable to the present condition. I think the railroads, this committee, and all railroad-operating people feel that it is perfectly competent that a portion of the offices should be put upon a nine-hour basis in conformity with this law, and that may increase to such an extent that a very large percentage will ultimately be upon that basis. We

think simply that that law should not be made effective as regards the 100 per cent at this time.

Mr. RYAN. You remember this is a year after the enactment of the law.

Mr. RAWN. I realize that; but the conditions are as we state, and the thing that appeals to me personally most is the equity. The law intended, as I understand, to prevent working operators excessive hours, as to do so endangered the operation of the trains and endangered life. That was the object of the law. If there are offices which will come within the provisions of this law and the operators are to-day working twelve hours with one hour off for meals, and it is thought by some one competent to pass upon that, that such an operator is not working excessive hours, he should be allowed to remain on his present hours; but those who are working excessive hours now, owing to their excessive duties, should be relieved. In other words, it should be graduated so as to attain the object stated in this law.

Mr. RYAN. This law does not state any such thing—that there should be any discrimination at continuously-operated offices.

Mr. RAWN. I realize that; but I was taking what I presumed was the intent of the law—to promote the safety of employees and persons in traveling. Now, I assume that the desire is to accomplish the greatest amount of good in that direction. I did not mean to say that the law provides for some being exempt and some not being exempt; but it is reasonable, I think, to suppose that the proviso giving to the Interstate Commerce Commission jurisdiction in this matter meant that some one should pass upon the merits and demerits of any controversy that might arise. I think that is a very reasonable assumption. Otherwise I know of no reason why the Interstate Commerce Commission should have been given any jurisdiction at all; and all we are asking, Mr. Chairman, is that that we be given a court of resort so that that our matters may be passed upon. It is not the intention or thought of the railroads to evade putting more or less offices on the nine-hour basis.

Mr. ADAMSON. The reason of the proviso—the reason of giving that jurisdiction to the Commission—as it was stated by certain of the conferees who stated it to the entire body, is that some of the carriers thought they could not possibly be ready for the operation of the law and desired in case of special stations to have the privilege of asking an extension from the Commission.

Mr. RYAN. That was the way I understood it—never to give them the right to suspend the operation of the law, in any case.

Mr. ADAMSON. Yes; the conferees agreed to that.

Mr. RAWN. For the purposes of the argument, let us assume that the contention of the railroad companies is correct—that there are not enough available operators to fill all of the offices working their present hours and comply fully with the law. If that assumption is correct, and the position of the Interstate Commerce Commission continues as it is, we will come up to the 4th day of March physically unable to comply with this law to its fullest extent. Therefore it would seem, from that standpoint, that the Commission or some one should have jurisdiction to say what should be done under those circumstances.

Mr. RYAN. We think they have that power now.

Mr. RAWN. Unfortunately, they do not think so.

Mr. ADAMSON. It appears to me from your statement that the Commission is not discharging the duty imposed upon it by that proviso; but inasmuch as you all say you have not formally filed any application with them, they could not have formally passed upon the case, it seems to me.

Mr. RAWN. The committee representing the railroads certainly could not misunderstand the position of the Interstate Commerce Commission. They were very emphatic in their declaration as to the interpretation of the law.

Mr. ADAMSON. I believe I would have put it up to them and made them rule on it officially.

Mr. ESCH. Is there any difficulty found on the part of the representatives in complying with the other portion of the law?

Mr. RAWN. No, sir.

Mr. ESCH. Is any anticipated?

Mr. RAWN. The railroads are in hearty accord with the purpose of that law.

Mr. ESCH. Suppose the amendment you seek is inserted in that law, can you tell the committee when the Illinois Central system will be fully equipped to comply with this law?

Mr. RAWN. I do not think I would want to go on record, for reasons you may well understand. If you will permit me, I will answer that in this way. The Illinois Central Railroad would be perfectly willing, but I want to qualify that, because we propose complying with the law as well as we can whether any relief is given us or not; but the Illinois Central Railroad would say from choice that they should be required at this time, if you please, to equip only the more important offices on a nine-hour basis. We would be perfectly willing to make a strenuous attempt to do that—to get the additional men to do that. Then the increase beyond that should be governed, it seems to me, by merit, or if we were not able to get as many operators as would equip all of the more important offices on a nine-hour basis, we would do the best we could in the employment of additional men up to the time the law took effect, and do as much more as we could after the time the offices were equipped. It is very important for the most important offices which come under this law, because they are operated continuously night and day. That should be passed upon by somebody.

Mr. ESCH. Where you allow extensions in that way you are apt to draw the matter out, as was done in the matter of the coupling device and air brakes. I think we granted two extensions. That law was passed twelve years ago, and I think there are a couple of hundred thousand freight cars to-day that are not equipped.

Mr. BARTLETT. The law was passed in 1893.

Mr. ESCH. Yes; the original law.

Mr. RAWN. In answer to that I would say I think it is fair to assume that Congress would not want to pass a law and leave no redress, even though there might be serious burdens and unfair burdens thereunder. They would not want to pass a law without giving to some tribunal the right of review.

Mr. ESCH. Do you not think that legislation indicated rather a generous treatment by Congress?

Mr. RAWN. Yes; the railroads take no exception to the language, but unfortunately we are here between the upper and the nether millstones.

Mr. MANN. What effort has your road made to comply with the law and put its provisions in force before the date when the law takes effect?

Mr. RAWN. I made the statement somewhat in that direction before you came in that we have for about eight or ten months been taking students from two or three telegraph schools, and have put them on at our stations as helpers at wages of \$25 a month, and we have been able to get more or less by so doing. Some of them have developed into operators before this time, and have taken their places when vacancies occurred, but it has not created any material surplus.

Mr. MANN. What I wanted to get at was whether you had put any of your offices upon the basis of hours that is now provided for in the law?

Mr. RAWN. We have not.

Mr. MANN. You have made no effort in that direction?

Mr. RAWN. Except those that are for long periods. We have offices that are working eight hours or nine hours——

Mr. MANN. Eight hours or nine hours?

Mr. RAWN. Well, nine hours; but where there are three men dividing up the twenty-four hours, as contemplated by this law.

Mr. MANN. Do you apprehend that it would be possible to wait until the 4th of March and then put this law into effect all over your system on that day, even if you had enough employees?

Mr. RAWN. No; but I say we have been making a reasonable effort to educate men, and the question of available men who are already telegraphers is governed by the supply extant at any one time.

Mr. MANN. But do you not think that that task of determining whether there were enough telegraphers would be best accomplished by putting the nine-hour basis into effect at certain places, and seeing whether you could do that?

Mr. RAWN. I think that is a reasonable supposition.

Mr. MANN. You have not made that effort yet?

Mr. RAWN. We have not, to the extent you say; no.

Mr. ESCH. Have you made any effort to get a share of those 2,500 commercial telegraphers who are out of employment?

Mr. RAWN. Perhaps so, because, as I told you a while ago, we have been expanding our telegraph service very materially, and therefore have employed a large number of additional men. If there are no further questions, that is all I have to say.

Mr. GRAY. That is all that we care to present, Mr. Chairman, unless the committee have some questions that they want to ask. I just simply ask the right to make this closing statement, and that is that this is hardly comparable with the safety-appliance law, for this reason. There was not a carrier in the country that could have complied with the safety-appliance law, simply considering the matter of securing material and applying these appliances. The consideration that was extended to them by Congress was unusual, but it followed up a great period of depression, as you will remember. It was passed in 1893, as I recall it, and the roads were just beginning to recover from that in 1898 when the first extension of a year was given us, and

then the extension of six months followed, and I believe that was the extreme limit; and there may be cars, as you stated to-day, that have not the safety appliances, but I can not imagine where they are operated.

Mr. ESCH. I got that from the Interstate Commerce Commission.

Mr. GRAY. I appreciate that, but I can not believe that those cars are operated upon any of the large carriers of the country, because there is not one of them that would receive one of those cars. I have not seen one in years. Most railroads have gone further than that, because they will not receive a car equipped with safety-coupling appliances, unless it is also equipped with air brakes, so that that law eventually has surrounded itself with additional safeguards.

This, gentlemen, is peculiar in this one respect. We are in great doubt as to whether we can go out and purchase this commodity. If we can not purchase it, and you gentlemen leave us to face this condition on the 4th of March, then the closing of the offices is absolutely the only recourse; so that that is the fundamental difference between this and any mode of railroad legislation you have ever passed before.

Mr. MANN. Let me make this suggestion. Congress will be in session after the 4th of March. Suppose the railroads should make an honest effort to comply with the provisions of this law and then found, in a way that is easily ascertainable, that they were not able to man all of the offices, would not they then have a much better standing in asking for a change of legislation than they have now, when after eleven months they have made no effort to put the provisions of the law in operation on any railroad?

Mr. GRAY. I think you have misinterpreted what was said to a certain extent. I believe that every carrier has a clearly-defined plan as to what it is going to do to comply with this law. I know that we have, and I know we expect to maintain certain offices, and a great many of them, on the nine-hour basis.

Mr. MANN. There is nothing in the law that prevents you from putting that plan into effect now instead of waiting until the 4th of March. While the law does not take effect before the 4th of March, there is nothing to prevent a railroad from endeavoring to comply with the provisions of the law now, and there has not been anything to prevent them from doing that for six months past, and ascertaining by actual experience whether they can comply with the law.

Mr. GRAY. The only question about that is the inability to do that. It is quite a serious matter, because it will undoubtedly delay traffic. We can not get the men, we will say; and suppose that we can get the men, on the lesser traffic lines we have 1,700 miles in Oklahoma alone, and we have lines where the traffic is very, very thin, and it will be an absolute impossibility for that line to pay those expenses.

Mr. MANN. I have no objection to saying to you that I was not in favor of the proposition, but I do not believe that you have got any chance, or any right to ask that it be changed for your benefit until you have endeavored to comply with the law.

Mr. GRAY. If we felt that we were asking a change in this law for our benefit, we would not feel that we had any standing before your committee. We have endeavored to secure a method of relief that we understood and that practically every Member of Congress that we have talked to and every member of the Senate insists that we

have, and that is all we ask, that you gentlemen give us all you intended we should have. Every Member that we talked to agrees that it was so intended.

Mr. MANN. While that is true, I apprehend that it is also true that the Congress thought that the railroads would endeavor to comply with the law, and would be able to comply with the law, for that matter, and that it was not the expectation that the Interstate Commerce Commission should give its entire time for some time to come in considering applications, which evidently would be the case if we amended the law, because every railroad company would apply, and you would have to have a hearing for every one of them, and I do not think the Interstate Commerce Commission would do anything else for a year or two.

Mr. GRAY. That was not our idea. Our idea was that the Interstate Commerce Commission would hear the other side as well as our side; we never expected that we would present the only side to be heard, and we felt that they would say, after hearing both sides, "We believe that there is a certain per cent that you can do, and you must put that per cent into effect by the 1st of July," and then see what we do.

Mr. MANN. Why do you not put that per cent into effect now, so that Congress can judge?

Mr. GRAY. It seems to me it is pretty hard to get before Congress, in so large a body, all of our little troubles and difficulties. All that we ask is that the manifest intention of this law be so put there that that relief that you intended that we should have we can have. It certainly was intended that we should have a day in court. It was intended that we should show, if we can show, that this artificial shortage of men exists, and that we can not get the men to go out into Oklahoma. I am aware that we might be able to get a man in Pennsylvania where we could not get a man in Texas, and we might be able to get him in Illinois. Those things are all pertinent, and there are carriers that might be able to comply with this law in its entirety, and the Interstate Commerce Commission would so determine; and there might be others that it would be such a burden on as to make it impracticable and impossible for them to comply with the law in its entirety, who yet could do a certain amount.

Mr. MANN. How long do you think it would take the Interstate Commerce Commission to have a hearing for one single railroad on that and pass upon it?

Mr. GRAY. My idea is that the Interstate Commerce Commission in a day could make such a ruling, and at the end of ninety days they would have made another ruling.

Mr. MANN. We have been all day hearing you, and we have not got enough information to tell whether it should be put into effect or not.

Mr. GRAY. That is probably our fault.

Mr. MANN. I do not think so. You have been giving information all the time.

Mr. GRAY. The committee of railroad men, I beg to say, has endeavored to approach this matter in a broad way. We have not attempted to defeat the bill. We have not even argued against the justice of the nine-hour day; but we do ask to be allowed to say what we think are the reasons, and then we stand or fall on the basis

of what we must make our case, and if we do not make it we are out of it.

The CHAIRMAN. Let me ask you a question or two. How many telegraphers are there now in the United States in the employment of railway companies?

Mr. GRAY. I will have to estimate that to a certain extent, Mr. Chairman. We have figures from 111,000 miles, which represent 48 per cent of the mileage. Of the offices which handle train orders there are 16,718 day and 8,660 night. Stating that in another way, it would be 17,720 continuously operated day and night offices. It is a very infrequent thing where an office is operated during the night and not during the day time, although there are exceptions. Now, applying that to the mileage of the United States, this representing 48 per cent, there are 35,000 day offices, and a total of 53,493 offices. Applying that to the continuously operated offices there would be 36,916 continuously operated offices.

The CHAIRMAN. Then are there some other operators that are not included in the employ of the railroads?

Mr. GRAY. Yes, sir.

The CHAIRMAN. How many?

Mr. GRAY. We have not information on that score. We did not consider it important.

The CHAIRMAN. Can you approximate it?

Mr. GRAY. No, sir; they are operators in general offices and in relay offices where they do not handle trains at all.

The CHAIRMAN. Do you know how many telegraphers there are in the United States engaged in purely commercial business?

Mr. GRAY. No, sir.

Mr. ESCH. I understand there are 143,000. I was told so.

The CHAIRMAN. Do you know how many there are who are not employed in either of these lines?

Mr. GRAY. No, sir; we would have no way of gathering that information. We do know that on the mileage of the United States, taking 58 per cent which we have received that on, it would require approximately 15,000 additional operators to operate the present offices with only the hours that they are now open.

The CHAIRMAN. There are 15,000 under the law as interpreted that would be needed and must be drawn from some source or other, and you have not any idea at all of the magnitude of the source from which they are to be drawn?

Mr. GRAY. No, sir; only from our daily experience in the procurement of men.

The CHAIRMAN. What would that be? Does not that enable you to form some estimate of the number of men, 15,000 or 10,000?

Mr. GRAY. We have felt that if we could secure 3,000 or 3,500 men it would realize our expectation. Now, whether we will be able to secure those, or whether we will be able to get them in New England or in the West, we do not know.

The CHAIRMAN. Do you mean by saying that that will realize your expectation that it will meet your wants?

Mr. GRAY. No, sir; it does not mean that it will meet our wants.

The CHAIRMAN. Then there would be still a deficiency of 11,500 men?

Mr. GRAY. Yes, sir; that would be my estimate.

✶ The CHAIRMAN. Have you any data upon which you base that opinion?

Mr. GRAY. No, sir; except, as I say, our daily experience in attempting to get men to fill these positions.

The CHAIRMAN. Would you say that there were not that number of men that were available at your average wage?

Mr. GRAY. We do not believe that we could secure a great number more at a higher wage, but of course we can not say that. That is the purest supposition.

The CHAIRMAN. You do not think that the sources from which to draw your supply could be increased by increasing your wage?

Mr. GRAY. Yes, sir; but it is an absolutely speculative amount.

Mr. RYAN. Mr. Chairman, Mr. Perham, president of the Order of Railway Operators, is here, and I would like him to be heard, if the other side have finished.

Mr. GRAY. We are through, Mr. Chairman. We are very much obliged to you.

STATEMENT OF MR. H. B. PERHAM, PRESIDENT OF THE ORDER OF RAILROAD TELEGRAPHERS.

Mr. PERHAM. I will say by way of preface that I have had over twenty years' actual experience as a railroad telegrapher and signalman and eleven years as a national officer of their organization. Mention has been made of a circular letter that I sent out to the membership of the order on June 10, 1907, in which several questions were asked the men, and they were also urged not to go into the indiscriminate teaching of telegraphy at that time. I desire to say that this organization has a rule in regard to the apprenticeship question, not a rock-ribbed oath, but simply an agreement or obligation between the members one to another, that before they teach a student or take an apprentice they will get the permission of the superintendent of the employing railroad, and also the approval of the president of their organization, and that rule has had the effect of retarding the indiscriminate teaching of boys whose education has been sadly neglected, and by that means enhancing the welfare of the business of the railroad telegrapher. We desire that boys shall go to school; that they shall have some preparation before they go into this business, at least some knowledge of reading, writing, and arithmetic before they start into it. Under the old system we found that the business was being submerged by men whose early training had been neglected. One of the purposes of organization was the general uplift of men who had volunteered to engage in that line of business.

Mr. KNOWLAND. Provided you knew there were a number of applicants who were qualified by education, then you would have no objection to taking any number of them?

Mr. PERHAM. We have been very liberal in that regard.

Mr. MANN. How many apprentices have been approved by you within the last year?

Mr. PERHAM. I think it approaches about one a day at the present time. Some time ago it used to be much more than that, but the desire to enter the business has been curtailed for certain reasons which I will explain later on.

Mr. MANN. How many members are there in your organization?

Mr. PERHAM. About 43,000 at the present time; and I wish to corroborate the figures regarding the number of men employed, which I understand to be about 53,000. We have made some calculations on that subject, which of course are imperfect, but those are about our figures. We believe there are about 53,000 men employed in this country.

The CHAIRMAN. If you only have 365 apprentices a year, it is very evident that you would not have enough to keep up your organization.

Mr. PERHAM. The number of apprentices our members take is not an important factor in the case. There are many other sources from which telegraphers come. In every large city there are colleges for the purpose of teaching telegraphy, and they turn out so many men per month, and there seems to be an ample number of men to fill vacancies created in any positions upon the various railroads of the United States. In regard to the matter of the number of men available, if you remember, from those questions I asked one which bore upon that question, to find out how many men there were available at this time to fulfill the requirements of the law, I got answers from very nearly half of our membership; that is, I believe I received about 18,000 answers to those seven questions contained in the circular letter that was mentioned. I wanted to find out how many men were available who were employed in other avocations, because from the observation I had made there appeared to be great numbers of men coming into the railroad telegraphing business who leave it for various reasons, on account of the poor pay or the long hours, or the responsibility, and they can do better elsewhere. I received something like 8,000 names and addresses of men who would return to the telegraph business provided the hours were eight per day and the wages were about \$80 per month. Many of them mentioned a less rate of pay than that, but I am quite sure that if \$80 per month was offered for competent men to act as railroad telegraphers they could get at least 8,000 men; and yet I only received answers from half of the membership. I am inclined to think that it would be fair and proper to double that number, because if we had heard from them all certainly the figures would have been correspondingly increased.

The other question, in relation to the students, was also answered, and I found about 3,000 students who were ready to take positions, claiming to be competent to do so; and again, another question was in regard to the number of men unemployed, and from the answers that reached me there were very nearly 1,000. It must be remembered, however, that that was sometime ago. These answers came mostly in August and September of 1907. Conditions have changed since that time, and thousands of men have been discharged by the railroads since then on account of falling off in business. In fact, the railroads at this present time are discharging men by the hundreds; I am so informed by members of my own organization. They are discharging these men, well knowing that the time for the enforcement of this law is coming. In addition to that the strike of the commercial telegraphers of the United States occurred last year. Those men went out on strike and stayed out three months, and great numbers of them are yet looking for employment.

Coming through Chicago on my way to this city I ascertained that there were 72 men, as they termed it, "on the block," in Chicago—that is, men who were working for the commercial companies an hour or so a day just to eke out an existence. Those are men who are competent. That is the condition in one city where I happened to get the figures. I can guarantee to verify that there are 72 men earning one hour or two hours' pay in Chicago to-day, at the present moment, who would be very glad to accept a position with a railroad if they could get a steady position at anything like an attractive figure. The main center pin of the whole discussion is the question of dollars and cents; I am convinced of that. Years ago the conditions in the telegraph service were very bad indeed. In fact, I will state that as late as four years ago there were 7,000 telegraph operators working for a sum of \$18 a month.

Mr. BARTLETT. How long ago has that been?

Mr. PERHAM. Four years ago. There are none working at that figure now, that I know of, I am glad to state, but there are telegraph operators working twelve and fifteen hours per day for \$25 a month at this present time.

Mr. KNOWLAND. Are those students?

Mr. PERHAM. No, indeed; old employees, men who have been there for years.

Mr. WANGER. At railway offices?

Mr. PERHAM. Station agents, men who do all the things necessary, telegraph, sell tickets, check baggage, and look after the express and attend to switch lights, and all those various things that have to be done at a one-man station.

Mr. MANN. Will you give us a list of some of those stations?

Mr. PERHAM. I could; yes, sir.

Mr. MANN. So that we can get at the facts on both sides?

Mr. PERHAM. Yes, sir. I can not furnish that now.

Mr. MANN. Will you do that, and furnish that to the stenographer?

Mr. PERHAM. I will do that; yes, sir.

Mr. ADAMSON. Would it be practicable for the railroad companies when they fill up their stations under this law to put upon the telegraph operators other duties so as to enable them to discharge some of their present employees who are not telegraphers, and save money in that way?

Mr. PERHAM. I think it might be done in some remote instances, but not in very many.

Mr. ADAMSON. It would not be common?

Mr. PERHAM. Not as a rule.

Mr. KNOWLAND. In these offices where you claim they are getting \$25 a month, do they receive any other compensation? For instance, do they receive any compensation from the Western Union or from the express companies or from any outside source?

Mr. PERHAM. They might in certain places, but it is so infinitesimally small that it does not amount to anything. I have known cases where the Western Union would be 95 cents or a \$1 per month and the express would be \$1.63, and that with the wages would be the total of the operator's income.

Mr. KNOWLAND. Per month?

Mr. PERHAM. Yes.

Mr. BARTLETT. You speak about these offices where they get \$25 a month, telegraphers who do these various duties. Do you mean \$25 is the sum total paid by the railroad for all of those duties, or for the special duties of a telegrapher?

Mr. PERHAM. That is their total income from the railroad company.

Mr. KNOWLAND. Does that include board?

Mr. PERHAM. Oh, no.

Mr. KNOWLAND. I did not know but what it might be at some of the stations where possibly they boarded the hands.

Mr. PERHAM. No, sir; they board themselves and their families on that amount.

Mr. RYAN. That was brought out in the hearing when this subject was up originally.

Mr. KNOWLAND. On the Southern road?

Mr. RYAN. Yes, and others.

Mr. PERHAM. I am well aware that my methods of getting information are imperfect, and the figures that I may quote may be erroneous. I do not know of any way of arriving at the matter accurately, but for our own purposes we have kept a record of the gradual growth of the organization and the work it has done. For instance, on this particular road that I have in mind in this vicinity three years ago there were 39 positions paying \$40 per month and less. At the present time there are 29 positions paying \$40 per month and less. That would indicate to you how slow the work of the organization is—what a conservative and slow business method it must pursue—to have those conditions last year after year as they do. The average pay, according to our figures, for all men, including train dispatchers, who receive from \$120 to \$150 per month, and exclusive station agents, men who run the large station positions, who get from \$200 to \$300 per month, is in the neighborhood of \$54 per month at the present time. That includes all of the 53,000 men that were mentioned as the total number, according to the figures that we are able to obtain.

Mr. RYAN. The average wage, then, would be about how much for the additional men necessary to enforce this law? Would it be higher than that general average?

Mr. PERHAM. No; it would be the same; that is, under the various schedules established on the majority of the railroads in the United States. That, of course, would bring them up to the average salary.

Mr. RYAN. I thought they were getting more, because the railroad gentlemen here estimated that that average was between \$60 and \$80 per month.

Mr. PERHAM. It varies according to locality quite considerably. For instance, out on the deserts of Arizona and Nevada, where it is difficult to keep men, the minimum rate of pay is very much higher than it is in other parts of the country, where the employee may live in a civilized community and have all the advantages that that implies.

Mr. MANN. It is a good thing you mentioned those two places, because there is no one on the committee from either one of those places.

Mr. PERHAM. I will state in regard to the wages that I am aware that at the present time that can not be the subject-matter of a law. I wish that it were. I would like to have the wage question thor-

oughly gone into, so that it would be rectified in a stronger and more efficient way than any organization is capable of doing it. On the matter of the number of men, I am convinced that 15,000 men would be sufficient to make a three-man station out of every one and two man stations in the United States. I am not able to verify that statement, but that is the way it occurs to me. Of course that is not necessary and would not be done. I believe that this subject was gone over very thoroughly in the House on March 2 and 3, 1907, and many pages of the Congressional Record are filled with the record of a similar debate to that which has been held here to-day. The law as it stands is very different from the bill that was first presented by Mr. Murphy. It was an eight-hour bill, and it covered the telegraph operator, the signalman, the interlocker, and every employee concerned with the movement of trains by signal; but after it was made into a law it was hardly recognizable, for the reason that it left so many of the employees who should be in it out of it. Another point was that it was nine hours instead of eight hours. The record of the debate also shows that it was not only for public safety that the law was enacted, but it was with a kind consideration of the comfortable convenience of the men themselves. The record of the debate shows that.

The employees, glad to get such a measure of recognition as is contained in that law, desire that it be given a fair test as it is. They are of the opinion that nine hours for a day's work, at a station continuously operated, for the present is better than the twelve-hour rule that heretofore obtained. They also think that the one-man station, where a man may be kept on duty thirteen hours if needed, or seventeen hours three days out of the week, surely covers every position where the duties are light or the man is not required to be right at the key all the time. Therefore, as far as I have learned from the many men I have met who are employees, who know exactly what the duties are and what this law does in relation to them, they are all anxious that this shall be given a fair test as it is, and therefore we hope that no amendment will be made to the law.

As to the matter of testing a particular case, as I understand the law, it would mean something like this, that John Doe and Richard Roe, employed as night and day telegraphers at, let us say, Lewiston Junction, would have a particular statement to make in regard to why they should have nine hours, and the representatives of the company would have a statement to make as to why they should work twelve hours. That is my understanding of that provision of the law, and I believe it is a wise one. The law itself is of such a compromise nature, it is so liberal to the employing company, that there does not seem to me at the present time to be any good reason why there should be an inquiry at any one particular point on any railroad in the United States. Where they require twenty-four hours' service from two men at the present time, they absolutely require it or they would not have the men there. If there was one chance in the world of laying off one of those men he would be laid off, and one man would work the job and draw the overtime when it was necessary to keep him there. I have been through all of these conferences, making schedules and wage scales for the telegraphers, and I have noted the changes made in the line of economy by all of the various railroads. Without specifying any particular one, it is a general rule

that when the wages of the men are increased by means of the organization there are usually a sufficient number of men laid off to take up the increase that was given. That is to say, if they can dispense with the services of the night man by keeping the day man on nine hours and then two hours and three hours during the night, that will be done, and it has been done; and consequently where there is continuous service at a station it is absolutely necessary for the welfare of the railroad, or it would not be there. Consequently those employees, although they may have nothing to do except to watch train movement for twenty-four hours, should be limited to nine hours or eight hours, as the case may be, so as to insure those men having a chance to be alert, active, watching the signals, doing their daily duties with a bright mind, and capable of doing good work while they are on duty.

It is very seldom if ever before that we have had a chance to state to any one outside of the railroad business what the situation has been. I desire to state that as a signalman I have been on duty over forty hours, shifting levers every few minutes, reporting trains by telegraph, taking orders, etc.; and the reason I was on duty so long was that my confrère, the night man, was sick, and they were unable to find a man to take my place on account of the complicated lever movements. I would send telegrams every few hours about my physical condition, having become worn out, and at last I went to sleep with the sun shining on my face and my hand on the lever, and stopped a train that meant a day's pay fine for doing it, and after I had let the train by I notified the division official that within one hour that office would be closed; but in one hour I was relieved. Such things used to be frequent, and a man in charge of a signal tower is up against a stiff proposition, regardless of the amount of work the record may show he has done. Before he lets a train into the block he has to watch it and take care of it and see that the block is clear, and then he is looking for the next one, and he is watching the train sheet and seeing how the trains run, and although the physical part of it, the moving of a lever or the sending of a telegram or anything of that kind may look as if the man has accomplished very little, yet he has been right there and performing duties as monotonous, we may say, as the occupation of a man appointed to watch the pendulum of a clock every day, and not miss a motion. You can imagine what a strain that would be on a man, if he sat there and watched that pendulum and did not miss a motion; and yet the duties of the telegraph operator are often very similar to that. I certainly hope that there will be no amendment to the law, and that this law will be tested for a while, and that after a while we will be able to show to you that an amendment is required, but on behalf of the employees instead of on behalf of the employers.

The antagonistic feeling often shown by railroad officials toward telegraph operators, signalmen, station agents, and other similar employees is very difficult to understand, because nothing is gained by it and much can be and is lost by it. That class of employees render services as valuable to the companies as any other class of employees, and there seems to be no good reason for the vigorous, energetic, and I may say, in a measure, unscrupulous opposition, that has been shown by them toward any effort of said class of employees to ameliorate their condition. Employees in the train and engine service have never had to fight any such opposition as we have encountered, and the officials seem to be perfectly willing to pay an

ignorant, unskilled, and oftentimes a densely ignorant, newly arrived foreigner, better wages than they are willing to pay fairly well educated, highly trained, and skillful American citizens for doing their station and signal work. This present hearing is a demonstration to some extent of that idea.

Mr. RYAN. Do you believe there are a sufficient number of men in the country that can be obtained to do this work to comply with the terms of this law by the 4th of March?

Mr. PERHAM. Yes; if the wages are paid.

Mr. ADAMSON. Will it require \$80 a month to do that?

Mr. PERHAM. No, sir; but the wages may have to be readjusted.

Mr. ADAMSON. What will be the effect upon the safety of the traveling public and the convenience of the people at the stations affected if the railroads attempt to recoup by discontinuing a large per cent of their present stations and closing their offices?

Mr. PERHAM. Trains may be delayed more than endangered. I think that is a matter that will take care of itself. I have been at a station as agent where I was supposed to go on at 9 a. m. and go off at 9 p. m., filling up my twelve-hour day. At 7 a. m. a citizen would come to me and say, "I have driven in 4 or 5 miles from the country and I want my freight," and I would have to go over to the station at 7 a. m. and let him have it. The citizens will see that the work is done at the stations

Mr. ADAMSON. I just wanted to know what your idea was as to the practicability of that proposition which has been suggested here to-day. What per cent of those stations would it be practicable that they could afford to discontinue, for their own business?

Mr. PERHAM. I do not know that they could do it at any place. At the present time, according to my view of it, economy has been worked overtime on every railroad with which I am acquainted, and I think that there are no extra employees at the present time kept, and that there are no men who are competent that they could dismiss.

Mr. ADAMSON. There are no stations that they could discontinue?

Mr. PERHAM. I think not. They might discontinue them for a while, but they would open them again, as I have seen them do in many places. I have known instances where a schedule was instituted which raised the pay of the men, where the \$60 telegrapher's services were dispensed with and a \$30 clerk put in his place, and that arrangement lasted a few weeks, until it was shown to be ineffective and bad all the way around, and the station was opened again pretty soon on the old basis.

Mr. MANN. May I ask you a practical question? Is there any underlying motive in this present contest, affecting the wages of telegraphers? Will the effect of the enforcement of this law be to increase the wages of the railroad telegraphers generally?

Mr. PERHAM. That is inseparable from it, as I understand it. The old motto that covers the situation is "Whether you work by the piece or you work by the day, reducing the hours increases the pay." This provides for a reduction of hours.

Mr. MANN. That motto does not cover a day's wages, as I understand it.

Mr. PERHAM. It has this effect, that the men will try to maintain the same rate of wages that they have received for twelve hours for the nine-hour day, thus raising their rate per hour.

Mr. MANN. That is not what I had reference to. I did not mean as to whether it would do that, but whether the effect would be to increase—not maintain but increase—the wages of the railroad telegraphers. For instance, you say that it will be practicable in your judgment to obtain plenty of telegraphers at an increase in salary over the average now paid. Of course if these men are paid higher wages, \$80 a month, that means that when you renew your agreement, or possibly before, the average will be increased, does it not?

Mr. PERHAM. Yes, sir.

Mr. MANN. Is there any spirit of contest in reference to that in this present matter?

Mr. PERHAM. No; that phase has not been suggested by anyone to me up until this time.

Mr. ADAMSON. Is this the situation you find? If this law goes into effect on the 4th of March, will the railroads be compelled to pay the amount demanded in order to get the operators, and if they secure an extension, can they escape paying the amount that the operators demand to go to work?

Mr. PERHAM. They can escape it, and they can get men for less than the wages they state, \$80 a month. Some of our men indicated it in their replies; but I wanted to know whether this was a matter of dollars and cents, and that is why I named that figure.

Mr. ADAMSON. If the law goes into effect there are several thousand operators that the railroads will have to pay the larger amount, whether it is \$60 or \$80 per month; while if there is an extension granted, they can escape or postpone paying those increases?

Mr. PERHAM. I could not really answer that question precisely. Many roads have put this eight-hour law into effect already. Many railroads have been instituting the eight-hour offices by request of the organization for many years past. There are many railroads that this law will not effect to any great extent, in fact, in more than 10 per cent of their positions.

Mr. MANN. What are some of those roads that have put this into effect?

Mr. PERHAM. The Pennsylvania line east of Pittsburg and Erie, for one. On the main line there is a general rule of eight hours for signal men and others employed in the movement of trains. The Chesapeake and Ohio might be quoted as one of the roads that have been instituting the eight-hour day on the mutual-agreement plan, between themselves and the committee, having put in 283 eight-hour positions on December 6, 1906, and more since that date.

Mr. WANGER. I understood you to say that the number of telegraphers' apprentices accepted during the last year was about one per day. About how many applicants during that same period were refused?

Mr. PERHAM. There might have been two or three, but I could not say.

Mr. WANGER. You mean an aggregate of two or three for the entire year?

Mr. PERHAM. No; per day.

Mr. WANGER. Per day?

Mr. PERHAM. Yes, sir. There are certain reasons why we would decline some and accept others; but that has nothing to do with the main result. The fact is that the railroads have been giving bonuses for teaching students for a long time past, as high as \$75 a man, to

urge people to get into the business of learning telegraphy, and we have not interfered, and have nothing to do with it. Also, the railroads have opened large schools in certain cities and have been maintaining them and turning men out, most of whom only stay a year or two, and when they find out the conditions they go into some other avocation to make a living. Our insurance department shows pretty well the number of men who leave the business. We have an insurance department, giving insurance at a very low rate, and it is able to support itself and have a good surplus mainly because of the lapses of men who leave the telegraph business.

Mr. WANGER. Have you any method of determining whether an applicant for an apprenticeship is qualified by education to enter upon the study of telegraphy?

Mr. PERHAM. We usually investigate, advising some against it. In one respect it is men who have been crippled in the railroad service, for the reason that they can only work on a few railroads of lesser type, and can not get employment on the larger railroads because of a physical examination that debars them. The age limit and the physical examination debar many men, and we do not want these men unwittingly to go up against such a condition. Also, I might say that we favor minors who are relatives of members or employees. If a man has two sons, for instance, who are working around him at the station and acting as messenger boys or clerks, we are rather glad to have him teach those boys, because he knows about the objects of the organization, and will be sure they are trained right while he is teaching them. Another thing is that he will teach them, anyway, while they are around the station, and it is good policy for us to say yes to such an application.

Mr. MANN. Do you know how many commercial telegraphers are out of employment now?

Mr. PERHAM. I do not; but as Mr. Beattie, president of the Commercial Telegraphers' Union, is here, he will be able to answer that question. If there are no more questions, I have finished.

Mr. MANN. There are no railroad telegraphers out of employment?

Mr. PERHAM. Oh, yes.

Mr. MANN. There are none out on strikes?

Mr. PERHAM. There are no strikes in our business at the present time. There are several thousand men out of employment at the present time.

Mr. MANN. How do they happen to be out of employment; just in the usual course of moving?

Mr. PERHAM. No, sir; they have been recently discharged because of the present depression.

Mr. MANN. So that, in your judgment, it would be much easier to comply with the provisions of this law now than it would have been at the time the law was enacted?

Mr. PERHAM. Much more so. I feel confident that the gentlemen who operate these railroads will be surprised, when they come to put this law into effect, to see how easily their offices are filled. We possibly know more about the idle men than the operating officials would, because they write us, very often, and tell us about their troubles.

Mr. MANN. One gentleman stated this morning that his road has been unable to obtain telegraphers. Do you have any system by which railroads can apply to you for information as to men?

Mr. PERHAM. We have no system, but it is not unusual for railroads to ask us to send them men, which we do. Some railroads we keep supplied with telegraphers all the time, upon request.

Mr. RYAN. They could have those 72 telegraphers in Chicago if they would pay the rate?

Mr. PERHAM. Yes; we would be very glad to get positions for those men.

Mr. RYAN. I would like to hear from the president of the commercial telegraphers, who is present.

STATEMENT OF MR. W. W. BEATTIE.

Mr. BEATTIE. In the outstart I must confess that I am not entirely familiar with the railroad subject or the matter now under consideration, but I do know it to be a fact, traveling over this country and in Canada, that the commercial telegraphers would be more than willing to accept railroad positions if the salaries were higher and the hours of work were much less than they are at the present time, for the reason that the commercial men work very hard. It is a grinding process for nine long hours, and I know from what knowledge I possess that they would be glad to escape it, and I am rather of the opinion, that if the railroads throughout the country would throw out some sort of inducement to the commercial men they would not find it a hard matter to secure operators.

Mr. RYAN. What do you mean by inducement as to hours and wage, about what wage to the average office?

Mr. BEATTIE. Say about \$65 a month minimum.

Mr. KNOWLAND. What does the commercial telegrapher get now?

Mr. BEATTIE. The commercial telegraphers draw all the way from \$35 to \$82.50. Very few get \$82.50.

Mr. ESCH. How many of them are there?

Mr. BEATTIE. The commercial men?

Mr. ESCH. Yes.

Mr. BEATTIE. Possibly 40,000 to 45,000 commercial men, including the newspaper men and broker operators.

Mr. ESCH. Have you any estimate to-day of those who are idle?

Mr. BEATTIE. I know there are a good many out of work.

Mr. ESCH. Can you make any approximation?

Mr. BEATTIE. Approximately there are about 8,000.

Mr. ESCH. Out of employment?

Mr. BEATTIE. Yes. I may be wrong; as I say, I have no figures and I do not desire to make an incorrect statement.

Mr. ESCH. Are many of the commercial telegraphers exrailroad telegraphers?

Mr. BEATTIE. In a good many cases they have gone into the commercial business, that it is true. I know this to be a fact. Right in the city of Washington there are some 25 or 30 men who would gladly accept a permanent position. They make only about three hours a day, and that state of affairs prevails throughout the country, I dare say. As I said, I am not familiar with the railroad subject.

Mr. MANN. Would these commercial telegraphers, so far as you know, be familiar enough with the matter of running railroads and trains to step into a railroad office and operate it?

Mr. BEATTIE. With a very little experience they would, and I know there are practical railroad telegraphers in the commercial branch to-day who have assured me that the very moment the hours were a little better and the wages were increased they would re-enter the railroad service. It is a question of hours and wages.

Mr. BARTLETT. Are all these men who are out of employment male operators, or do you often have women?

Mr. BEATTIE. Some of them are females.

Mr. BARTLETT. How many of the 8,000, approximately, are females?

Mr. BEATTIE. The percentage is small—I dare say not over 400 of them.

Mr. BARTLETT. Four hundred?

Mr. BEATTIE. Four hundred, if that. I am inclined to think that it is unreasonable to suppose that a respectable man would want to work in a responsible position like that of a railway telegrapher for the salary now paid. But just the very moment the railroads make up their minds to pay proper wages, I am convinced that they can get the men.

Mr. MANN. What are the salaries that commercial telegraphers receive?

Mr. BEATTIE. From \$35 per month to \$82.50. The general average is about \$55 per month.

Mr. MANN. For commercial telegraphers?

Mr. BEATTIE. Yes, sir.

Mr. MANN. Thirty-five dollars a month refers to small offices maintained at villages?

Mr. BEATTIE. They work in the main offices, young girls and young boys.

Mr. MANN. Take an accomplished telegrapher who would be competent to have the responsibility of railroad business; what salary does he now receive as a commercial telegrapher?

Mr. BEATTIE. That is the railroad telegrapher?

Mr. MANN. No; the commercial telegrapher.

Mr. BEATTIE. A good, competent telegrapher, if he can work what is known as the heavy circuits, will get the higher salary. But even that is sometimes not the case. I have seen a \$65 and a \$55 man compelled to work alongside of an \$82.50 man doing precisely the same service.

Mr. MANN. That is the exception, I assume, but you take an ordinary good telegrapher who might be competent to do railroad business; what salary does he now receive as a commercial telegrapher?

Mr. BEATTIE. He would receive in the commercial branch fully \$75 per month.

Mr. RYAN. As a commercial telegrapher?

Mr. BEATTIE. Yes.

Mr. RYAN. That is the regular schedule?

Mr. BEATTIE. Nine hours per day.

Mr. ESCH. What do the Associated Press men get? Are they the highest paid men?

Mr. BEATTIE. Yes, sir; they average from \$30 to \$35, and in some few instances \$40 per week.

Mr. MANN. Per week or per month?

Mr. BEATTIE. Per week.

Mr. ESCH. As I say, the Associated Press men in your service are your highest paid men?

Mr. BEATTIE. We have several press associations. The Hearst pays the highest.

Mr. ESCH. What do those men get?

Mr. BEATTIE. All the way from \$25 to \$35 per week.

Mr. RYAN. What is the pay of the Hearst men?

Mr. BEATTIE. The Hearst men get as high as \$40; not under \$35. They work eight hours.

Mr. HUBBARD. Hours and wages being the same, do you think a telegrapher competent to do railroad as well as commercial work would prefer the railroad service?

Mr. BEATTIE. Decidedly so; the work is not so hard.

Mr. ESCH. Is it more responsible?

Mr. BEATTIE. It is more responsible; yes, sir.

Mr. MANN. The commercial telegraphers are more in the larger cities?

Mr. BEATTIE. Yes, sir.

Mr. MANN. And the railroad telegraphers are in the smaller cities?

Mr. BEATTIE. Yes.

Mr. MANN. It would depend on whether a man would want to live in a large city or in a respectable community in the country—what his preference would be?

Mr. BEATTIE. Speaking for myself, I would gladly desert the commercial service for the railroad service. I regret that I do not know much about the railroad matter. I only state that in my opinion it is a matter of hours and salary, from what I have heard among the commercial men.

Mr. BALDWIN. In response to Mr. Esch's inquiry as to what occurred in Wisconsin, I have seen statements in the papers that this law went into effect on the 1st of January.

Mr. ESCH. Yes.

Mr. BALDWIN. And that the Great Northern and perhaps one other railroad did not put it into effect, but raised the question of whether Congress having enacted the statute upon this subject, the Wisconsin act did not conflict with that and therefore was inoperative, but that all the other railroads had put it into effect; and this article stated that upon some railroads where there were 400 stations there were close on to 100 stations that were closed.

Mr. ESCH. That is the Wisconsin Central?

Mr. BALDWIN. Yes, sir; and that there was such great dissatisfaction on the part of the operators that as a result they had sent a written communication requesting the railroad not to put the act into operation, and that the response was that the penalties amounted to \$200,000 a day and they would continue to put the act into operation.

Mr. ESCH. Do you know whether or not that was brought out before the commission and any action taken?

Mr. BALDWIN. It was; and the question was brought up before the Wisconsin commission as to operating the trains by telephone, and it was stated in this article that at a hearing by the commission the unanimous opinion seemed to be that the trains could be operated safely by telephone under the systems that were adopted, and that the greatest dissatisfaction with the law seemed to be with the men.

Mr. ESCH. They had an eight-hour schedule?

Mr. BALDWIN. Yes, an eight-hour schedule.

Mr. ESCH. I would like to ask the president of the railroad telegraphers, in that connection, whether he has heard anything from the telegraphers in Wisconsin on that subject?

Mr. BEATTY. No, sir; that is all news to me.

Mr. BALDWIN. I have no personal information on the subject.

Mr. ESCH. Yes, I understand.

The CHAIRMAN. Mr. Perham, suppose that the railways should find that they can use the telephones and telephone operators for telegraph and telegraph operators, what effect will that have upon the telegraph operators?

Mr. PERHAM. It might have the effect of putting some of them out of employment, but the law applies to those telephone operators the same as it does to telegraph operators.

The CHAIRMAN. Yes; but very many telephone operators are women, and, as I understand it, at least in the country, the compensation that is paid to them is very much less than that which is paid to men telegraphers.

Mr. PERHAM. I think that it has been—that is, to telephone operators not connected with train movement; but where they are connected with train movement we rest assured that they will join this organization that I represent, and we will endeavor to protect them in the matter of wages. We claim for women members the same rate of pay that we claim for men members for similar work. That is one of our rules and has always been invoked, so far as we are concerned.

I would like to make one additional statement, and that is that 10 States of the Union have enacted eight-hour laws for the railroad telegraph operator at the present time, and there are 7 other States in which the question is a very warm one now. I omitted that from the statement I made.

Mr. ACKERT. North Carolina has practically the same law we are talking about now, but it is left in the hands of the railroad commission to take up the question. We have 123 offices in North Carolina, and when they passed the law we appeared before the commission and took up the important stations, what they thought was necessary, and adjusted them with the commission, and it is working very satisfactorily in North Carolina. We are having no trouble. We have a court of appeals in North Carolina, the operators have a court of appeal, and they appeal to the commission, and it is all gone into by the commission and adjusted satisfactorily to the railroads and to the operators. We have had no trouble there, where the same law applies.

Mr. RYAN. Is that law the same as this?

Mr. ACKERT. Practically the same as this.

Mr. RYAN. And has the commission the power to suspend the operation of the law entirely?

Mr. ACKERT. No; the operators took up the question of how many operators should be employed at a station, and the commission decided. Where the duties are heavy we put on three men; and at an outlying station, when there is no particular necessity for it, they have not compelled us to do it.

Mr. HUBBARD. Do they make general regulations, or do they deal with particular offices?

Mr. ACKERT. They take up the Southern Railway as a whole, and other railways as a whole.

(At 4 o'clock p. m. the committee adjourned.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., February 7, 1908.

The committee met this day at 10.30 o'clock a. m., Hon. William P. Hepburn, chairman, presiding.

The CHAIRMAN. Gentlemen, Judge Knapp by our invitation is here this morning. We will not detain Judge Knapp more than a few minutes.

**STATEMENT OF MR. MARTIN A. KNAPP, CHAIRMAN INTERSTATE
COMMERCE COMMISSION.**

Mr. KNAPP. Mr. Chairman and gentlemen, I am at the service of the committee.

The CHAIRMAN. Mr. Knapp, the purpose of the committee in inviting your presence was to find out, if we might, what action the Interstate Commerce Commission had taken looking to a construction of the second proviso of section 2 of the act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon, approved March 4 last.

Mr. KNAPP. Mr. Chairman, we have given that matter some consideration, and the entire Commission agree that the proviso in question is as plain and definite as it is limited; that it means exactly what the language purports; that the Commission in a particular case, apparently a case of special and peculiar conditions—some emergency not common to the roads generally, or to a general class of stations—can give an extension of the period within which the law shall be complied with.

Without attempting now, unless you so desire, to elaborate the reasons which led us to that conclusion, I think it is quite sufficient to refer the committee to the Record as it appears when this bill was under consideration. I have with me the Congressional Record for March 3 of last year, from which it appears that this bill in substance, if not exactly in its present form, passed the House without any proviso. In other words, it was made a hard-and-fast rule, the Commission having no authority to relieve any carrier in any case from its obligations. As the bill passed the Senate some changes were made, among others one adding this clause or some equivalent language; and then the matter was taken up in conference, and it appears, as I understand it, that the House refused to allow its conferees to consent to the introduction of any such relieving clause, but finally, upon the statement that otherwise the bill could not pass at all, there was a second conference at which this proviso in question was assented to, and so became a part of the law.

Now, without going into details, the statement of the chairman, and of Mr. Wanger, and of Mr. Adamson, and Mr. Bartlett—

Mr. ADAMSON. That proviso was suggested in the last conference proposed by the Senators, and objected to by the House conferees, as the condition upon which the instructions to the House conferees were accepted by the Senate. That proviso was created by the Senate as it is now—

Mr. KNAPP. And assented to, as I understand it appears now, and as it substantially appears in the Record, on the report of the House conferees that otherwise the bill could not pass.

Mr. ADAMSON. It looked that way. The Senators wanted some sort of relief in case of hardship, and wanted to leave an avenue open to you to grant that relief in special cases.

Mr. KNAPP. Yes; which to our apprehension, as evidently to the understanding of this committee and the House when the bill was passed, meets some peculiar conditions at a particular station, or some emergency which rendered it impracticable for the carrier to comply with the law at that place.

The CHAIRMAN. Then it is the opinion of the Commission that the language of this proviso limits the jurisdiction of the Commission to considering the petition of a road applying only to one station, or one tower, or one individual?

Mr. KNAPP. I do not mean to say that more than one station might not be embraced in a single petition, but each one would have to be separately considered.

The CHAIRMAN. Then they might not include, say, on a branch line of a hundred miles—they might not include in that petition for an extension any number of the stations on that line; they might include any number in one petition or in one case?

Mr. KNAPP. We have not held that, and have not had occasion to. I assume the carrier would not be obliged to present a separate petition for each station at which it is desired an extension of the law, but could embrace two or more stations; and I should assume, for the moment at least, that where conditions were shown to be substantially the same at two or more stations one order might extend the law as to all of them without a separate order in each particular case.

Mr. BARTLETT. Is it not a fact that the railroads wanted you to lay down some general rules as to every case? Did they not?

Mr. KNAPP. The railroads have not asked us to do anything.

Mr. ESCH. No formal order has been made with reference to it?

Mr. KNAPP. No.

The CHAIRMAN. Have any petitions been filed?

Mr. KNAPP. Only two, but our information is that other petitions will be filed; but those two illustrate to my mind the questions that will be presented. One of them covers your own observation with respect to branch lines. A given railroad, some days ago, filed a petition with the Commission in which it asks that the law be extended as to some seven or eight stations out of a large number, and it happens that every one of those stations is on its main line. There is no allegation of inability to get the additional men, and no allegation of inability to pay them, but the whole application is an argument to show that they ought not to be required to have them at those stations; and that is practically true in the other case, where the petitioning road sets forth that it has some 1,800 stations at which telegraph orders are from time to time received, and it goes on to show that some 500 and odd of them are offices at which the business is very light, and it virtually asks that the law be extended as to the whole 500 of those offices, on the ground that the business at those stations is of such an insignificant character that they ought not to be required to have three men there.

Mr. ADAMSON. Judge, the whole question in point presented to us turned upon what the word "case" meant. Now, as I understand you, you have made no rule or holding, and you see nothing in the law to indicate that you would refuse jurisdiction if a carrier on a par-

ticular line in presenting his case did mention any number of offices or operators. Of course we have nothing to do with the merits in each case. That would be for you to determine in your ruling. But if the carrier on a particular line or branch presents a case in which it makes allegations and offers proof as to any number of stations on which it has trouble in installing the improved service at the time, you see nothing to prevent your sustaining jurisdiction in that case?

Mr. KNAPP. If I perfectly understand you, Mr. Adamson, that would be within our jurisdiction, because you assume a case where the station is in process of installation.

Mr. ADAMSON. The question as presented to us is how the railroads shall be required to file a petition—as to each particular station or otherwise. It would take a thousand years of your time if you undertook to consider it a distinct case made by a carrier as to each station affecting whatever relief it wanted on its lines.

Mr. KNAPP. So far as the time and labor required to make the investigation are concerned, it does not occur to me that it would make any difference whether all the stations on a given road were included, or whether there was a separate petition for each one of them, because each station would have to be included in the investigation. You are virtually saying that this Commission should, under this very limited authority, the meaning of which is perfectly obvious, exempt a whole class of stations on all the roads of this country, probably 50 per cent of the whole.

Mr. ADAMSON. That would depend upon whether the facts justified it. The question we are considering is not the merits of the case or proof, but the jurisdiction of the case.

Mr. KNAPP. Speaking for myself, at least, although we have not had occasion to consider this feature of it, I believe that the point which you ought seriously to consider is this: Is the mere want of need of an additional employee a good cause? Is the mere fact that the business of a particular station is light and that two men could do it without strain or excessive fatigue—is that good cause?

Mr. ADAMSON. Those are questions of fact for you to consider. We are talking about the assumption of jurisdiction on the facts set out in the papers.

Mr. KNAPP. I think that is a question of legislative policy and not of executive administration.

Mr. MANN. Suppose a railroad company having a thousand stations should file a petition with you for relief at fifty stations, and should allege and be able to prove that it is a physical impossibility to obtain the telegraphers to man those stations. Then you are absolutely satisfied that it is impossible to maintain the necessary number of stations, and the stations have been closed up for lack of men. The proof being sufficient, have you decided that you could not grant relief in that kind of a case?

Mr. KNAPP. We have not, Mr. Mann, and I think should not.

Mr. MANN. Have you decided that you can not grant relief?

Mr. KNAPP. The facts being established beyond reasonable question that a given road absolutely could not procure the additional men, that might furnish good cause for extending the period within which that road should comply with this law.

Mr. MANN. That covers the whole question as presented to us.

Mr. HUBBARD. Would you regard that as a particular case, may I ask?

Mr. STEVENS. Did you speak advisedly when you used the words "beyond question?"

Mr. TOWNSEND. "Beyond reasonable question" he said.

Mr. KNAPP. Let us meet that side of it just for a moment. I suppose I have received upward of 3,000 telegrams within a week; so many, in fact, that it took two clerks to open them, and I could not read a quarter of them. But I have read a good many of them, and my information is that a very large percentage of them assert that there are ample men to be obtained.

Mr. TOWNSEND. Let me ask you a question, Mr. Chairman. From any complaints that have been made to you, or requests that have been made by the railroads, do you find that there is any lack on the part of your Commission of jurisdiction under the law to enable you to grant relief if the proper showing is made to you?

Mr. KNAPP. That depends upon what you mean by proper showing.

Mr. TOWNSEND. I mean to satisfy the Commission.

Mr. KNAPP. That the railroads ought not to be required to have three men on a station?

Mr. TOWNSEND. That they might not be able to get them.

Mr. KNAPP. Not being able to get them might be sufficient cause.

Mr. TOWNSEND. You are not interpreting the law?

Mr. KNAPP. Certainly not, except as I have stated.

Mr. TOWNSEND. The question was whether you had power under this proviso of the act to grant the relief if you found that they were entitled to relief.

Mr. KNAPP. If the Commission is satisfied in a given case that the railroad can not obtain the men, I think that would be good cause for some reasonable extension of time.

Mr. MANN. And it would not be necessary to file a separate petition for each station on the road, as I judged from your former statement? I do not say not necessary to make separate proof in each case, but a separate petition?

Mr. KNAPP. A number of stations could be grouped in the same petition.

Mr. BARTLETT. All the stations on one road might be grouped.

Mr. ESCH. Out of the 3,000 telegrams you received, did you gather the idea that it was purely a question of wages and hours of service?

Mr. KNAPP. Yes. Now, may I ask your indulgence for a moment? The CHAIRMAN. Certainly.

Mr. KNAPP. It seems to me perfectly reasonable to suggest that any extension which the Commission might give in a particular case should have some reference to the time which the Congress gave all roads at all stations in which to prepare themselves for compliance with this law. You gave a year, on the assumption that that was ample time in the main, and you provided that if it turned out that in any instance, here and there, on account of some special conditions or peculiar emergencies, a road was absolutely unable to get the men, the Commission might relieve it for the time being; might relieve that railroad from the hardship which otherwise the law would put upon it.

Mr. TOWNSEND. That is all we had in mind.

Mr. KNAPP. But that would seem to me to mean three months or, say, six months. Now one of the roads whose petition has already been filed makes no showing that it would be any more able or any more willing to comply with this law three months or six months or a year hence than it is now. It does not say it can not get the men or is not able to pay them, but says they ought not to be required to get them at all.

Mr. TOWNSEND. Does not even say they have tried to get them?

Mr. KNAPP. No; does not even say it has tried to get them.

Mr. ADAMSON. Upon what particular facts might appear, or allegations might appear, in the case would depend the merits of the case on the one hand or the imperfections of the case on the other. But the sole point we wanted to hear you on, the sole point of trouble, was whether or not when a man made a proper case on its face on paper, it related entirely to one station or more?

Mr. KNAPP. It depends on whether it is a proper case.

Mr. ADAMSON. Of course if it is not a proper case you decide it on the merits.

Mr. HUBBARD. Would not the condition of each particular road constitute a particular case?

Mr. KNAPP. Yes, perhaps; but this should be taken into account: It is a mere question of money. It is not denied by any railroad man with whom I have talked that they could get enough men if they paid them. Is it for the Commission to determine what are reasonable wages?

Mr. ADAMSON. If they file with you an apparently good reason why they should have an extension for thirty days or sixty days, and should say they could get ready in thirty days or sixty days, you would not deny that petition because it includes more than one station?

Mr. HUBBARD. As a question of jurisdiction with the Commission, would that be a particular case that you would not entertain or inquire into?

Mr. ADAMSON. Would that make a case when they filed the papers?

Mr. KNAPP. I have already said that if a carrier established the fact—

Mr. ADAMSON. We have not got to the question of proving the fact; we are talking merely about the jurisdiction of the papers.

Mr. KNAPP. If they prove they could not get the men, that might be a good reason for postponement.

Mr. ADAMSON. We are talking about the sufficiency of this legislation to enable them to state on paper their case and have it heard; that is all.

Mr. KNAPP. If there are half as many cases as the carriers allege, the Commission could not investigate them in a year, and I doubt if it could in two years, even if it did nothing else and worked sixteen hours a day.

Mr. SHERMAN. That is not a defect of this law, is it, Judge Knapp? The purpose of our inquiry is whether this law is sufficient to enable you to meet all emergencies. Now is it, or is it not? That is the point. Under this law have you authority to dispose of the cases presented to you? The question is not, Have you the facilities, but have you the authority? It may be that the Commission is not large

enough. It may be that more Commissioners should be added, so that they could divide up the work and some of them devote their time entirely to this work.

Mr. KNAPP. In a way, Mr. Sherman, but let me explain about that. Of course you are asking questions which the Commission has had no occasion to consider. We are burdened with other matters, and only a few moments relatively have been given to this question, which has recently been put upon us. But I shall assume that the Commission will not undertake to say that a road which can get men by paying higher salaries than they are now offering has shown good cause for extending this law.

Mr. ADAMSON. You can not talk about what the facts are, but you are talking about taking jurisdiction. What they are going to prove in a case is another question.

Mr. KNAPP. That is so.

Mr. BARTLETT. Have you seen the proposed amendment, Mr. Knapp?

Mr. KNAPP. I have not.

Mr. WANGER. If I understand you aright, Judge Knapp, the difficulty presented to you so far by the carriers is not that they may not get the men, but that they do not think they ought to be required to get the men to comply with the terms of the law?

Mr. KNAPP. Precisely. Now, in my opinion, that is not good cause. The law does not contemplate that this Commission should exempt carriers as to any stations simply because the Commission thinks it is not necessary for them to have any more than two men there. That is the real question.

Mr. ADAMSON. If we had the evidence in the case before us a good many of us might agree with you; but we have not reached the evidence at all. Men come before us here and ask for additional legislation upon the allegation, that they make to us, that the Commission construes or says it will construe this law to mean that they can only entertain jurisdiction of a case which relates to a particular station at once, insisting, on the other hand, that when they make a case involving as many stations as the difficulty exists at the Commission ought to hear evidence concerning all the stations in that case. All we want to know is about your power and jurisdiction, not the facts, because you do not reach the facts at all. What is the true construction, as your Commission holds, or will hold, about that? Can not a particular carrier in making its case appeal to you in the same particular case for all the stations and operators where it has trouble, leaving you to be the judge of the facts and as to the proof?

Mr. KNAPP. What do you mean by "trouble?"

Mr. ADAMSON. I do not know what the trouble is.

Mr. HUBBARD. He means inability to get men. The question, Judge, in my mind, is whether or not each application, to be judged on its face as presented, shows a particular case in which you have power to act or not, or whether, on the other hand, you are to find a state of circumstances which affect only a single station.

Mr. ADAMSON. Whether the case consists of one or a dozen stations, you have to make up the case on the face of it.

Mr. MANN. Have you had any cases presented to you in conferences or in your hearings?

Mr. KNAPP. We have had no hearings, but we have had two cases presented.

Mr. MANN. Whatever you may say about it so far is obiter dicta.

Mr. KNAPP. I stated at the outset that we have had a brief conference upon the subject, and the entire Commission agree that we have jurisdiction only to take up particular instances and determine whether as to each of them there is some practically insuperable difficulty confronting the carrier other than the mere question of wages.

Mr. ADAMSON. The only question is, Can the carrier bunch all the stations?

Mr. KNAPP. I think so, but we would have to deal with each station. We would not be saved any labor by that.

Mr. KENNEDY. The pleadings in your court are not required to follow technical rules, are they?

Mr. KNAPP. Oh, no. We are very liberal.

Mr. KENNEDY. They might be separate cases and still be all heard together? Is not that true?

Mr. KNAPP. Yes. I venture to express just for a moment the other idea, that any extension that this law contemplates in any case is a temporary one, and ought to have some reasonable relation to the time which Congress itself has allowed all carriers to prepare.

Mr. ADAMSON. There is no doubt about that.

Mr. KNAPP. For example, the safety-appliance law was passed on March 2, 1893. Certain of its provisions were to go into effect on July 1, 1895. The law gave those carriers, as you will observe as to those provisions, two years and four months. We gave them seven months additional. As to automatic couplers, the law gave them five years. We gave them an additional year and seven months, on the showing that it was a matter of physical impossibility, to say nothing of financial impossibility, to get the couplers; that every concern manufacturing couplers in the United States was working night and day, and that they could not be turned out in sufficient numbers to equip the cars in this country within the time fixed by Congress; and more than that—and this was a very important consideration—that even if they had the couplers, it would be necessary to withdraw from the service, say, 20 per cent of the cars all the while, and under the conditions which prevailed at that time that was simply a denial of service to shippers.

Mr. BARTLETT. It occurs to me that instead of discussing what a matter in a particular case meant, you have discussed what would be considered a sufficient cause.

Mr. TOWNSEND. I think he has discussed it very clearly.

Mr. ADAMSON. My understanding is that no new legislation is needed, because they will entertain a petition embracing as many stations as any company presents.

The CHAIRMAN. If there is nothing further, we will thank Mr. Knapp for his presence here to-day. We thank you, sir.

Mr. KNAPP. As I understand, judging from the expressions of my associates, and certainly speaking upon my own judgment, the mere inability to get the men at present wages would furnish no cause for extension.

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

OF THE

HOUSE OF REPRESENTATIVES

ON

H. R. 7557

TO PROMOTE THE SAFE TRANSPORTA-
TION OF EXPLOSIVES

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

**COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Friday, February 7, 1908.**

The committee met this day at 10.30 o'clock a. m., Hon. William P. Hepburn (chairman) presiding.

Mr. SHERMAN. Mr. Chairman, General Humphrey and several other gentlemen are here present in reference to the bill to regulate the transportation of explosives, which is made a special order for to-day.

Mr. MANN. That is bill H. R. 7557.

Mr. SHERMAN. Mr. Chairman, Doctor Dudley is also here, to explain the provisions and purposes of the bill, H. R. 7557, as to the transportation of explosives.

The CHAIRMAN. Very well. Doctor, give to the stenographer your full name and address.

**STATEMENT OF DR. CHARLES B. DUDLEY, OF ALTOONA, PA.,
CHIEF CHEMIST, PENNSYLVANIA RAILROAD COMPANY.**

Doctor DUDLEY. My name is Charles B. Dudley. I am the chemist of the Pennsylvania Railroad and president of the bureau for the safe transportation of explosives. I think that covers the ground. My residence is Altoona, Pa.

Mr. ESCH. Did you appear before the committee at a former hearing on this subject, two or three years ago, with Mr. McCrea?

Doctor DUDLEY. Yes. Will you prefer, Mr. Chairman, to ask questions, or—

The CHAIRMAN. If you will go on in the first place and state what you have in mind it will be agreeable to us, and then we may ask questions afterwards.

Doctor DUDLEY. I would like to say that the necessity for this bill seems to be, very briefly, as follows: First, there is quite a body of legislation in the statutes of the United States that is antiquated, that is not applicable to the present conditions of the manufacture and transportation of explosives; legislation that carries a serious penalty with it for the violation of the law; and one of the purposes of this bill is to ask you to substitute this legislation, which is believed to be up to date, for all previous antiquated legislation. That is one of the purposes of the bill.

Second, uniformity in the regulations applying to the different railroads has been found to be of the utmost importance in securing the enforcement of such precautions as are necessary to produce safety in transportation. If one railroad has one set of regulations and another railroad has another set, or if one has none and another has good regulations that are essential for its safety, the one having

no regulations would get the bulk of the business, and consequently there will be no control. That has been one of the difficulties in getting uniformity in the way of safety in transportation.

Perhaps I should go back a moment and say that instead of asking Congress to take complete supervision of this whole matter of the manufacture, storage, and transportation of explosives, it has been decided after a good deal of discussion—and the bill was brought before you four years ago with the idea in mind of asking Congress to do that very thing—I say it has been decided to be advisable to allow the manufacturers of explosives and the transportation companies to handle the matter themselves, independent of Congressional action, if possible. That attempt is being made now, and here is a galley proof of regulations that have been agreed upon, or are in process of being agreed upon, as a revision of the regulations now in force by some 93 of the largest railroads, representing 140,000 miles out of a total of 235,000 miles of railroad in Canada and the United States and Mexico.

I say these regulations are agreed upon by the American Railroad Association and 93 of these railroads, to get uniformity in the methods that are essential for producing safety in transportation. Now we run up against two or three difficulties in securing this uniformity. Some of the railroads do not want any regulation. They say they do not, but as a matter of fact they do. Some say, "We will not bother about that thing. Our revenue from explosives is very small." And yet it is essential that there should be cooperation, and therefore we have introduced one clause into this bill requiring every railroad in the United States to provide regulations for safety in transportation.

Another very peculiar state of affairs, as an incident of the matter at present, is that if a shipper offers a transportation company any product of any kind whatever and misrepresents that shipment for the sake of securing a lower rate, under the present legislation of the interstate-commerce act we can go for him. But if he misrepresents the shipment and pays the rate—for instance, if he offers us dynamite under the name of some other article in class 1, the first classification, the highest rate, and pays that rate—we can not touch him. There is no possibility of prosecuting or getting any claim or hold, as we understand it, on any man who misrepresents a shipment. So we have introduced a section in the bill to make it a criminal offense to misrepresent a shipment.

Mr. BARTLETT. What section is that?

Doctor DUDLEY. The bill is No. 7557, and the section——

Mr. MANN. It is section 5.

Doctor DUDLEY. Yes; section 5. Again, we are a good deal troubled in this way: Some of you may not know it, and it is not very pleasant to hear, but we have actually found men taking explosives in dress-suit cases on our passenger trains, and taking them to their places of business, through the streets, on a street car, into the Broad Street Station, and down somewhere to Delaware to be used.

We therefore want a general regulation, covering interstate commerce, to make it criminal to carry explosives on a passenger train except in very limited amounts, as section 1 provides in the proviso, which is essential for carrying on the business.

Those are the three or four essential points which it is desired to cover in this bill.

Mr. BARTLETT. You refer to samples?

Doctor DUDLEY. Yes. There is no way by which we can get the necessary data for investigations except by samples. Now, I can go into details on the situation to-day in the transportation, but it is for you to say if you want to hear them.

Mr. BARTLETT. You include in a general term "gunpowder" under the subject of explosives, do you not?

Doctor DUDLEY. We say "gunpowder or other explosives."

Mr. BARTLETT. That would include any kind of gunpowder?

Doctor DUDLEY. Yes.

Mr. BARTLETT. How much gunpowder could a man carry in going hunting?

Doctor DUDLEY. Half a pound.

Mr. BARTLETT. Then a man would have to walk or ride in a carriage or an automobile in really going hunting from one State to another?

Doctor DUDLEY. Ammunition is provided for. Fixed ammunition in any amount can be carried.

The CHAIRMAN. Would not 1 pound of gunpowder, exploded in a passenger car, cause some trouble?

Doctor DUDLEY. Yes; 1 pound of gunpowder exploded in a passenger car would give rise to considerable trouble. But in every country there is some minimum shipment allowed for laboratory purposes. Half a pound is about the smallest quantity that could be used. A man could have 10 pounds of dynamite on a car at one time, but there must be 20 half-pound packages of it; and it is an interesting thing to know that it has been found in the transportation of explosives that the division of the explosive into small packages is a great safeguard. That is one of the reasons why fixed ammunition is almost relieved from any regulations or restraint at all. Each piece of ammunition is done up by itself and placed in a little division in a paper box, so that an explosion in one does not affect the rest to any serious extent; so that it is believed that this is as good as we could do under the conditions.

The CHAIRMAN. That separation into compartments would not affect dynamite, would it?

Doctor DUDLEY. We have to have small samples of dynamite.

The CHAIRMAN. If there were 20 half-pound packages of dynamite in the same suit case and one of the packages exploded, several others would explode too, would they not?

Doctor DUDLEY. That depends on how it is done up. I do not know that that experiment has ever been positively tried [laughter], but I think it would depend on how it is done up. If each package is done up separately in several thicknesses of heavy brown paper, I do not think the explosion of one would explode all.

Now, there is a peculiar property in explosives, and that is that the more that the material is cushioned in any way the less it seems to be liable to transmit the explosion.

Mr. MANN. In time of war or trouble would this prevent the carrying of ammunition?

Doctor DUDLEY. We have thought of that, and we have assumed that in time of war military necessity takes precedence over *everything*, even setting aside acts of Congress.

Mr. MANN. No; it does not. [Laughter.]

Doctor DUDLEY. We have assumed there would be no difficulty arising in that case.

Mr. BARTLETT. You are judging of the present law, and you take it for granted that the President would be Commander in Chief of the Army and Navy, and that he would set it aside.

Mr. MANN. He could not set aside an act of Congress.

Mr. ADAMSON. He does not have to set them aside. He can go on without regard to them.

Mr. MANN. Would this affect artillery ammunition on railroad trains?

Doctor DUDLEY. During the Spanish-American war we were asked at Altoona whether it would be safe to carry fixed ammunition on passenger trains, and——

Mr. MANN. I am not talking about passenger trains but freight trains, filled with troops, carrying ammunition along with them, or filled with artillery. Would not the men in charge of it carry with them the necessary ammunition for the guns?

Doctor DUDLEY. I think so, because I do not see how it would be possible to do it in any other way.

Mr. MANN. Those men are not carrying it for hire.

Doctor DUDLEY. They are allowed to carry it on a freight train.

Mr. MANN. Not on any train where you carry passengers for hire.

Mr. DWINNELL. Section 4 forbids the transportation of certain explosives by a carrier in the transportation of passengers or articles of commerce by land or water, but the proviso of section 1 permits the transportation of certain explosives, providing they are not carried in the part of the vessel or vehicle which is intended for the transportation of passengers for hire. That was drawn for the purpose of covering such trains as have passengers and freight.

Mr. MANN. It will be unlawful to carry these things on any train.

Mr. DWINNELL. The language is "vehicles" instead of "trains."

Mr. SHERMAN. Then you maintain, Mr. Dwinnell, that you may have a train of four freight cars filled with the highest character of explosives and may attach to that one passenger car and carry passengers in that?

Mr. DWINNELL. I think so.

Doctor DUDLEY. There is nothing to prevent it, sir; and I would like to say for your information, gentlemen, that that is a situation that is absolutely essential and can not be met, so far as we can see, in any other way, because there is a very large percentage of trains in the mining regions known as "mixed trains," made up of freight and passenger cars.

Mr. MANN. Would this bill permit the carrying of high explosives in freight cars composing a train made up of freight cars and one or more passenger cars?

Doctor DUDLEY. The freight cars under this bill can have high explosives or any other explosive in them, and at the end of a freight train a passenger car or train can be attached, under this bill. It is practically impossible to get explosives to the place where they want to use them without such a provision, and at the same time meet the

passenger traffic that is required. In the sparsely settled portions of the country there are a very large number of branch roads that are operated only with what are known as "mixed trains," freight and passenger. Now, the bill prohibits the putting of explosives on the passenger car, but it does not prohibit the carrying of the explosives on the train elsewhere than directly where the passengers are.

The CHAIRMAN. Suppose a train of five cars, consisting of four freight cars followed by a passenger car, and the explosive, say a ton of high explosive, should be exploded in the first car; would there be any harmful effect upon the rear car, in your judgment?

Doctor DUDLEY. I should say that so small an amount as a ton, sir, could not cause any very serious difficulty to the passenger car.

The CHAIRMAN. Suppose it would be a carload, then?

Doctor DUDLEY. We had a case where a carload of dynamite was exploded in the yard at Crestline, Ohio, and the men walking along the same track about six or eight cars in the rear, with freight cars between in a continuous line, were not injured. Of course I could not guarantee you that. I would not insure you that four cars away from where a car went out everybody would be perfectly safe, but—

The CHAIRMAN. I saw once the effect of an explosion of 800 boxes—8,000 boxes—of dynamite in sticks, 100 in a box, each one wrapped in tissue paper, and every object within 100 yards of the location of that car was crushed down, not blown up; buildings and other cars, and a turntable that was 200 feet away, made of heavy 12 by 12 timbers, planked with 4-inch plank a foot apart—these timbers were a foot apart—and this planking was broken and crushed down between the 12-inch timbers, broken in three pieces all the way along. Everything was crushed downward. The theory, as a gentleman explained it, was that the atmosphere was suddenly thrown up, and then, upon the return, after the removal of the force, the weight of the atmosphere crushed everything within a distance of three or four hundred feet. I was there the next morning.

Doctor DUDLEY. Was that at Council Bluffs?

The CHAIRMAN. That was at Council Bluffs.

Doctor DUDLEY. I thought it likely, sir.

Mr. ESCH. You know what happened on your line at Harrisburg a few years ago?

Doctor DUDLEY. Yes.

Mr. ESCH. A couple of cars of dynamite were struck by a passenger train, and they blew up the whole train and killed 23 people.

Doctor DUDLEY. Yes. The question that the chairman asked me was whether in the same train, three or four cars back, they would receive the effect of the explosion. It is impossible to predict what the effect would be.

Mr. MANN. There is no prohibition of carrying these explosives in an express or baggage car?

Mr. DUDLEY. That is, as to samples. It is assumed that the express car and the baggage car are a part of the passenger equipment.

Mr. MANN. Where is the prohibition against carrying them? You call our attention to the fact that the prohibition prevents carrying them in a vessel or vehicle. I might say that the "vehicle" means one vehicle, and does not apply to another vehicle in the same train.

Doctor DUDLEY. I do not know that there is a positive prohibition that the explosive shall not be carried in an express or baggage car; but by implication—yes, if you will allow me [reads]—

That it shall be unlawful to transport, carry, or convey any dynamite, gunpowder, or other explosive between a place in any foreign country and a place within the United States, or a place in any State, Territory, or District of the United States, and a place in any other State, Territory, or District thereof, on any vessel or vehicle of any description operated by a common carrier, which vessel or vehicle is carrying passengers for hire: *Provided*, That it shall be lawful to transport on any such vessel or vehicle small-arms ammunition in any quantity, and such fuses, torpedoes, rockets, or other signal devices as may be essential to promote safety in operation, and properly packed and marked samples of explosives for laboratory examination, not exceeding a net weight of one-half pound each.

Mr. MANN. But explosives in the possession of the passengers are not carried for hire. They are in baggage or express cars. The only prohibition in the bill against carrying in that line is carrying on vessels. There you absolutely prohibit it?

Doctor DUDLEY. Yes, that is right. You would think it advisable, sir, to introduce in the bill a clause preventing the carrying of explosives on a baggage car?

Mr. MANN. I am trying to get advice and information from you at the same time. I was wondering why you made such a difference. Would not those people be affected who would engage in the transportation of explosives on the Lakes?

Doctor DUDLEY. I am not well enough informed to tell you whether the common practice is to carry them on passenger vessels or not. Perhaps Mr. Dwinnell can tell you.

Mr. DWINNELL. We have our own boats.

Mr. MANN. How do the rival companies carry theirs?

Doctor DUDLEY. Usually in smaller boats or freight boats.

Mr. MANN. Nearly all the freight boats carry passengers.

Doctor DUDLEY. I do not think that there is any great amount of explosives carried on vessels on the Great Lakes, unless they are carrying vessels for hire. There are not very many shippers on the Lakes.

I would like to suggest, if you will permit me, Mr. Chairman, in connection with this very question, the necessity for the elasticity provided there, which would permit the railroads, as you say, to attach a carload of dynamite to another car which is carrying passengers. In some States—I think Arkansas is one; doubtless you gentlemen are familiar with it, anyhow—the law provides, or did provide the last time I observed it, that freight trains shall be compelled to carry passengers when they offer themselves at the stations, and if you do not allow the elasticity provided in this bill you will see that the explosives will stop when they come to such a State. The railroads will have no way to get them through.

Mr. TOWNSEND. If you have that provision apply to one road, will it not apply to any road—putting a baggage car on and loading it up with dynamite?

Mr. DWINNELL. The railroads would refuse to do that.

The CHAIRMAN. Gentlemen, do not sections 2 and 3 provide for wonderful elasticity? Section 3 provides—

That it shall be the duty of every common carrier engaged in interstate commerce which transports explosives or other dangerous articles to prescribe regulations for their safe transportation within three months from the date of the passage of this act.

Then section 2 provides—

That it shall be unlawful to transport, carry, or convey dynamite, gunpowder, or other explosive or other dangerous articles between a place in any foreign country and a place within the United States or between a place in one State, Territory, or District of the United States and a place in any other State, Territory, or District thereof, on any vessel or vehicle of any description operated by a common carrier engaged in the business of transportation by land or water, unless the same, when offered for transportation, is in proper condition to transport in accordance with the best known practicable regulations for securing safety in transportation and is packed, marked, loaded, and handled while in transit in accordance with such regulations.

Now we provide for each railway company making regulations. Will it not be said that any regulation made by any railroad in accordance with this provision belongs to that class of regulations that is referred to in section 2 as "the best known practicable regulation for securing safety in transportation?"

Doctor DUDLEY. It would seem so to me, sir.

The CHAIRMAN. Well, then, that remands the whole subject to the varying minds of the authority for each railroad in the United States. They provide their regulations, and then, if your interpretation is correct, any style of packing or marking that is in accordance with the regulations is sufficient, and then it would put upon the Government the burden of showing that there was no regulation made by any railroad company that this particular case of packing did not apply to. Would you ever prosecute or convict a man under a statute of that kind?

Doctor DUDLEY. Our thought was this, that—

Mr. DWINNELL. Our thought was just the opposite of that.

Doctor DUDLEY. Our idea was that under the stimulus of this law the railroads and other transportation companies would immediately provide regulations. The point in mind is this: What regulations shall they be? It was thought possible that it might be extremely difficult to pass a law that would compel all transportation companies to adopt the same regulations, because, if I am right, you will notice in section 3 it says:

It shall be the duty of every common carrier engaged in interstate commerce which transports explosives or other dangerous articles to prescribe regulations.

There are three or four railroad companies in England that do not transport explosives, notwithstanding all the pressure of the Government that has been brought to bear upon them to get them to adopt uniform regulations, and it is believed there is no law to compel them to carry anything that they deem unsafe. If a railroad says, "We deem such and such a thing is unsafe to transport; we do not carry them, and will not make any regulations," what could be done? Now, the question of what regulations shall be devised comes in, and so it was thought that as soon as this law was passed all the railroads would stir this question up, and ask, "What shall be our regulations?"

Now, there is a body of laws that has been enacted through a period of thirty years—

Mr. MANN. Do you say, under section 3, that the railroad companies could amend the regulations?

Doctor DUDLEY. I think so.

Mr. MANN. It provides that in three months they must make regulations, and no authority is given to change them.

Doctor DUDLEY. The authority is given to change them because all the regulations in force may not be in accordance with the best known regulations.

Mr. MANN. Section 3 says that within three months after the act is passed they must make the regulations. There is no authority to change them in that.

Doctor DUDLEY. But it says that the regulations in force shall be the most practicable ones.

Mr. STEVENS. Who decides that?

Doctor DUDLEY. That brings up to a point. Section 7 provides that in the event of a controversy or question arising as to what constitute the best known practicable regulations——

The CHAIRMAN. That is not in this bill.

Mr. SHERMAN. You proposed section 7, but when I introduced this bill I struck that out.

Doctor DUDLEY. Yes. We proposed in section 7 that a board should be appointed consisting of five men, two of whom should be manufacturers, two should represent the transporting interests, and one should be an officer designated by the Secretary of War, the board to decide whether the regulations are the best ones or whether or not they are the proper ones. Mr. Sherman thought that was an unwise provision, in view of the fact that it provided a new board; so he suggested, and we accepted the suggestion, that any question of this kind, instead of being referred to such a board, should be referred to the Interstate Commerce Commission. Will you allow me to read the proposed section 7? [Reads:]

In the event of a controversy or question arising as to what constitutes the best known practicable regulations for securing safety——

Mr. HUBBARD. Does that relate to controversies arising before or after the making of some existing regulation?

Doctor DUDLEY. It relates to controversies arising probably on the part of a shipper who feels himself aggrieved by the enforcement on the part of the railroad company of some regulation.

Mr. HUBBARD. Probably on account of the violation of some existing regulation, so that the question in that case would not come up until after the event, would it?

Doctor DUDLEY. We do not understand it that way, sir. It is supposed that the transportation companies will enforce these regulations. That is the office of the bureau for the safe transportation of explosives and other dangerous articles.

Mr. HUBBARD. In the first place, let me ask you whether these regulations ought to be uniform throughout the whole country?

Doctor DUDLEY. They should, sir, for the reason that the practice should be uniform.

Mr. HUBBARD. Is it not desirable that they should be established by some authority other than themselves?

Doctor DUDLEY. The difficulty of that is the same one that characterizes the present antiquated legislation, namely, that the growth of the knowledge in the matter of explosives is so rapid that new regulations and devices have to be made use of all the while.

Mr. HUBBARD. Would not that authority have power to amend as it received additional light and knowledge?

Doctor DUDLEY. An act of Congress takes a year to get through.

Mr. HUBBARD. I mean general regulations, instead of separate regulations devised by companies, which would naturally differ. I am suggesting that there could be some regulation devised in advance, and the question should not be left to the Commission to determine after the event, to determine whether the regulation was a practical regulation or not.

Doctor DUDLEY. As the matter now stands, there is in existence a code of regulations for the safe transportation of explosives. That code was published and put forth by the American Railroad Association, which is an association of all the railroads in the United States and Canada and Mexico, banded together for the purpose of developing the best methods in railroading. These regulations have been put forth. Now, the association per se does not enforce anything; it recommends; so an organization of the railroads voluntarily is maintained as the bureau for the safe transportation of explosives. That embraces at the present time 93 of our railroads, all of the large ones, representing about 140,000 miles of the 220,000 miles covered by the association. That body has an organization consisting of a chief inspector and 17 subinspectors who are distributed all over the country, carrying out these regulations, enforcing them on the manufacturer where they apply to the manufacturer, and enforcing them on the railroads where they apply to the railroads, the function of the whole thing being to secure safety in transportation.

Now, in order that you may understand the matter, let me give you a single concrete case. An explosion took place at Essex, Ontario, last summer, due, as near as can be found out, to the leaking of dynamite.

Mr. HUBBARD. What do you mean by "the leaking of dynamite"?

Doctor DUDLEY. It is this: A cartridge of dynamite is usually 8 inches long and 2 or 2½ inches in diameter. Dynamite is liquid nitroglycerin, absorbed in wood pulp, nitrate of soda, and so forth, the absorbent material being commonly called the "dope." The limit of nitroglycerin allowed is that no dynamite containing more than 60 per cent of nitroglycerin will be received. Now, when this dynamite is made it looks a good deal like brown sugar. It is crumbly-looking stuff and slightly damp. In storage in a damp atmosphere the nitrate of soda absorbs moisture from the air, and this part of your "dope" becomes liquid; the nitrate of soda liquefies from the moisture in the air. Therefore part of the absorbent of that material has disappeared. Moreover, in warm weather nitroglycerin is very much more limpid than in colder weather, and if a lot of it is loaded in a car, as was done at Essex, Ontario, so that the cartridges are standing on end, the liquid trickles down, slowly down and down, and gets out of the box and gets on the floor. As a matter of fact, it is in evidence and well known that in this special case the last time the car was opened before the explosion the conductor and two men went in and found the floor stained with this stuff, and one of the men, after dipping his hand in it and putting the box over on its side, as it should have been placed at first, smeared the face of his companion with it. Then in that shape the dynamite was loaded and started on its way, and the theory is that a pile of the nitroglycerin collected in a semiliquid form and dropped down on the track, and when the wheel went over it it was sufficient to fire the car.

One of the regulations has to do with precautions against leaking dynamite. Another is that the cartridges shall lie flat, and not on their ends. In order to do this we have this bureau of seventeen young men, who are distributed all over the United States, constantly working this matter up and trying to get these regulations enforced.

I am giving you only two of the simple ones. There are a large number of them—precautions that have grown up as a result of experience in this matter. Now, it is believed there will be no difficulty in having these regulations adopted, because otherwise if each railroad sets out for itself it will have a big job.

MR. ESCH. Is there any cooperation between the railroads and manufacturers of dynamite?

DOCTOR DUDLEY. The railroads and manufacturers are a unit in this matter. These regulations are submitted to them, and there is a conference committee now in existence consisting of representatives of all the larger manufacturers, some nine of them, who are called upon at any moment by the chief inspector to consult over the regulations before they are changed.

THE CHAIRMAN. When you were here before the committee several years ago—I recall you were here several times—on one of these occasions those hearings were suspended, and we were told that the reason why the bill was practically withdrawn from consideration was that you were then in conference with the manufacturers. Now I want to ask if these regulations are the result of those conferences?

DOCTOR DUDLEY. They are, sir. Mr. McCrea was following the withdrawal of that bill. Mr. McCrea, of the Pennsylvania Railroad; Mr. Marr, of the New York and Western; Mr. Smith, of the New York Central; Mr. Sullivan, of the Missouri Pacific, and myself composed a committee of five to give this subject a careful study and submit to the American Railroad Association a series of regulations. We spent two years nearly over that matter, with about a dozen or twenty meetings, and some two or three days in a meeting. We submitted those regulations to the American Railroad Association. They were adopted by the association with the recommendation that all the railroads issue them and put them in force. We operated a little over a year on that plan, and then it developed that the railroads, some of them, did not enforce the regulations. They had the same regulations, but they would wink at difficulties for the sake of securing traffic. That led to the formation of the bureau for the safe transportation of explosives, whose constitution and by-laws I have here, which embrace, as I have already said two or three times, some 93 roads. Within the last two or three months we have had 10 additions, and it is hoped and expected that within the next year all the railroads of the United States and Canada and Mexico will become members of this bureau.

THE CHAIRMAN. Now, Doctor, in view of that fact, is there a necessity of any further legislation than simply to provide that no explosive shall be carried on any passenger car or vessel, except upon the person of the individual in charge of it, and then require that all explosives shall be safely and securely packed and plainly and legibly marked? Would not that, with the moral forces that you are bringing to bear upon the question through this organization, accomplish everything that is needed?

Doctor DUDLEY. It is believed, sir, that this bill, which has been studied and prepared with the utmost care and which is the result of probably at least 10 meetings of the representatives of the bureau with the explosive manufacturers, simply embodies the minimum of legislation that is essential to put us in the place that we ought to be in to secure safety. It is believed that it embodies the minimum. Every point and line here has been talked over with the utmost care by both sides in interest, as you will see, and we have tried to consider the general public, and the bill has been submitted to General Crozier for his criticism, and he approves it. We tried to do everything we could to get this bill just as simple as possible and at the same time to cover the ground which seems to be essential.

Mr. ESCH. Did you call in any official of the War Department in coming to an agreement with respect to these regulations?

Doctor DUDLEY. Yes; the bill was submitted to General Crozier.

Mr. ESCH. I mean the regulations.

Doctor DUDLEY. We have probably the best officer that General Crozier has; at least he said he was, and he did not want to let us have him. But by direction of the President he was detailed for the purpose, namely, Major Dunn. He is the chief inspector of the bureau for the safe transportation of explosives—probably the best-informed explosive man in the United States.

Mr. SHERMAN. Mr. Chairman, it is now within a minute of 12, and we have not by any means exhausted the subject. I understand that the House will not be in session to-morrow, and I therefore ask that the committee now take a recess until 10.30 o'clock to-morrow morning and hear the Doctor again then.

The CHAIRMAN. Without objection, that will be done.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Saturday, February 8, 1908.

The committee met this day at 10.30 o'clock a. m., Hon. William P. Hepburn (chairman) presiding.

The CHAIRMAN. Will you proceed, Doctor Dudley?

**STATEMENT OF DR. CHARLES B. DUDLEY, OF ALTOONA, PA.,
CHIEF CHEMIST OF THE PENNSYLVANIA RAILROAD—Con-
cluded.**

Doctor DUDLEY. Mr. Chairman and gentlemen, we had reached the point yesterday of considering section 3 of the bill, as to whether it would be advisable to make any modifications, with the idea in mind that section 3 as at present drawn requires every common carrier to prescribe regulations; that possibly that would be ineffective; and it was suggested that a modification should be made to section 3, requiring that the regulations to be issued by the railroad companies be approved either by the Secretary of the Interior, or the Secretary of Commerce and Labor, or the Interstate Commerce Commission, or somebody else that might be chosen.

Now, gentlemen, I would like to say on that point that that matter was very carefully considered when this section was drawn, and there

are two points in connection with this section that seemed to us to have a good deal of weight. As we understand the matter, the ultimate responsibility for events, whatever may happen in the transportation of explosives, is with the transportation companies, and can not be taken off from them. That is the way we understand it. I may be wrong about that. You gentlemen are lawyers, and I am not.

Mr. MANN. Would not that be a case where Congress required you to do a particular thing?

Doctor DUDLEY. Let me make my argument first, and then I will answer. The transportation companies are ultimately responsible for whatever happens. As a corollary to that, it seems that they are the ones nearest to the business and understand the subject best; they are experts, knowing best the things that are necessary to secure safety in transportation, and that therefore they should have the right to make the regulations under which the explosives are transported. If you take that right away from them in any way, you diminish their responsibility, as it seems to me.

One point further. It is not possible, as we understand it, for any aggregation of the railroad or transportation interests of this country to impose upon any individual member its behests. The American Railroad Association does not do anything that is compulsory. It does wholly what it does in a recommendatory manner, leaving the ultimate responsibility for whatever is done on the individual railroad. If the association points out a method that is desirable to avoid either the loss of life or of property and the railroad chooses to ignore that, the association can not compel them to take action. Therefore what we ask you to do, if you will pardon the word, in this section 3 is to make it obligatory upon all common carriers to make some regulations.

Now, then, let us see what points there are that will bring about uniformity, and let us take into consideration the impulse that you put upon them to bring them into uniform regulations.

The CHAIRMAN. Let me ask you, Doctor, is it not true that all of the transportation companies now have regulations in regard to explosives?

Doctor DUDLEY. No, sir; it is not. They do not; no, sir. One of the first steps of the committee of the American Railroad Association was to send to every railroad in the United States and ask what regulations they had with regard to explosives. Many replied, and all of those answers came to me and were codified.

The CHAIRMAN. Have you that document with you?

Doctor DUDLEY. No, sir. I can not tell you how many there were, but many of the companies had no regulations whatever.

Mr. BARTLETT. Is it done now?

Doctor DUDLEY. Since that time there have been tremendous steps forward in this matter.

Mr. SHERMAN. Were any of the roads which had no regulations the larger lines?

Doctor DUDLEY. No; they were the smaller lines. The subject had not come into prominence—that is, the real state of the case had not been fully realized or appreciated. The growth in the explosives business has been something phenomenal. In the census year of 1904 the census figures gave us 350,000,000 pounds of explosives made in the United States in that year. Major Dunn's latest figures, based

on the best information he gets from the inspectors, are that during the year 1907 not less than 500,000,000 pounds of explosives were made in the United States, and some estimates place the amount at 700,000,000 during the year. The growth is something phenomenal, and the matter has come into prominence in the last three or four years in a way that it never did before.

Now, then, I want to make clear to you gentlemen what is relied on by those who are trying to handle this matter to bring in recalcitrant railroads, if you choose, and have them adopt uniform regulations. There are two arguments which are very strong as we look at it: First, it has been passed on from mouth to mouth and in conference from one to another and is becoming generally disseminated through the transportation world that some concurrent and agreeing effort must be made by the transportation companies to handle this problem of the safe transportation of explosives in some way to avoid these dreadful accidents. If we do not, it is said that Congress and the States will be compelled, by the force of public sentiment, to take hold of this matter and make legislation which may or may not be drastic, so that one of the strongest impulses toward action is afforded, namely, to protect ourselves not only against losses in the transportation of explosives, but against the interposition of outside influences. The result of that has been to bring the railroads together in this matter in a way they have hardly ever been gotten together before.

But there is still another feature. It is a well-established principle of railroad management that a receiving road that loads a car of freight takes that freight subject to special regulations in regard to that freight, which may be enforced on any other road over which the car must pass before it reaches its destination. Those are called the rules of interchange. A carload of freight is loaded on the Pennsylvania Railroad, if you choose, and comes to a junction point with another railroad, over which it must pass. Now, then, there are certain well defined rules laid down and certain inspections made in regard to that car before it is received by the receiving road. Let us apply this principle, which is a well-known one. To give you a single illustration, I may mention that cars above a certain height are not received by certain roads because those cars will not go through certain tunnels. Also loadings of certain kinds are received only under certain conditions. Let us suppose, for example, the Squedunk Railroad has a manufactory on it and does not issue regulations for the transportation of explosives that are reasonable and practicable. Suppose it loads a car with explosives and that car comes to the junction point with another railroad, and that other railroad is the one that has adopted these best known regulations, if you will allow me to say so. That car would be refused under those conditions and the Squedunk Railroad would find its carload of freight on its hands. That is constantly being done, and has been done; and so we think, if you will allow me to say so, that this section 3 as drawn is about all that can be done by an act of Congress—that is, to require of railroads that they should make regulations—and then we ask you to leave it to us, if you will pardon the seeming presumption, leave it to us to see that they do make regulations that will be the best known practicable regulations.

Mr. BARTLETT. If one railroad did not do that, a railroad with which the Pennsylvania, say, connected—take the Squedunk Railroad, if you please—the only punishment they would receive, or the only punishment inflicted on anybody would be that the man who ordered the explosives would not get them?

Doctor DUDLEY. Yes; but no railroad is putting difficulties in the way of the delivering of freight, sir.

The CHAIRMAN. Suppose those regulations were very lax or nominal. Would not this anxiety to receive freight and receive freight charges induce the Pennsylvania line to accept it as it was?

Doctor DUDLEY. The value of any regulation is not wholly in the wording. It is in the method of execution.

Mr. BARTLETT. That is what I wanted to ask you. Suppose they adopted these regulations and then violated them?

Doctor DUDLEY. The value of the regulations, I say, is partly in what they cover and partly in the way of their execution.

Now, let me give you a few points. Mr. Patterson, general superintendent of transportation of the Pennsylvania Railroad, made a trip last week to New York to be present at the meeting of the bureau for the safe transportation of explosives and other dangerous articles. He regarded the matter of transportation of explosives as of such importance that he took the train to run over to this meeting, and he insisted that we do a great deal more than we are doing now. "I do not care what it costs," he said, "the responsibilities connected with this traffic are so great that we must have the protection that comes from a proper inspection of this business."

Now, sir, answering your question, sir [addressing Mr. Bartlett], I think the regulations, the characteristics that will lead to the enforcement by the railroads of these regulations, are twofold. The first is that at every junction point a railroad is on the watch. Now, the New York Central, through its connections, last summer had an explosion at Essex, Ontario. Fortunately there was little loss of life, but the damages amounted to \$50,000, and the Canadian judge mulcted them in a fine of \$25,000 for carelessness in handling explosives, that being possible under Canadian law, and he said that if he had the power over the whole thing he would have made that fine five times as much.

The CHAIRMAN. Doctor, suppose your road should receive a carload of miscellaneous freight from another railroad at some junction point. What do they know as to whether there are explosives in that car? It comes locked when they receive it.

Doctor DUDLEY. That is a very good point—the regulations as to shipments from connecting lines. "Cars containing explosives offered by connecting lines not known to have adopted and made due provision for enforcing these regulations will be thoroughly inspected, and if it be found that either the car or its lading is not in the condition required by these regulations, or if the shipments of explosives are not covered by card registers, the car will not be received until the defects are corrected by the line offering it." That is the regulation or proposed regulation No. 107. The car will not be received until the defects are corrected by the line offering it.

The CHAIRMAN. That is language; but as a matter of fact what effect has that?

Doctor DUDLEY. It has a tremendous influence, if you will allow me to say so. Following the Essex explosion in Ontario another car from the same magazine was caught in Buffalo. Now, I want to show you what the situation was in Buffalo. The Lake Shore Railroad would not receive it, because they are a part of the New York Central line, and they said: "We are afraid of that material." The Pennsylvania Railroad, which had brought it to Buffalo from the magazine, would not take it back again, simply because they said: "We have delivered this car to you in good order in accordance with the regulations. We have nothing further to say about it." The switching road on which it was pushed it up on the Lake Shore and pushed it back. The Erie road would not receive it. Major Dunn went up there with his inspectors, opened some of the boxes, got some of the explosive out, had it analyzed in Buffalo, had some of it sent to his own laboratory—about which I will speak in a moment—and finally told Mr. Lomadeaux, the superintendent of the Lake Shore, that he would send one of his inspectors to ride on that particular car to its destination, which he did, stating to Mr. Lomadeaux that the explosive in that car was not in the hazardous condition to transport that the one was in that had exploded at Essex.

I think you will find, gentlemen, as you study this subject more, that the railroads of the country are most thoroughly aroused over this question of safety in the transportation of explosives. It is going to cost our bureau about \$150,000 a year. We have established a laboratory at South Amboy and have a chemist there, and are going to put on an assistant chemist. This laboratory has a twofold purpose; first, to examine samples that are being offered for transportation in improper condition before they are loaded—

The CHAIRMAN. Before what?

Doctor DUDLEY. Before they are loaded. For instance, at the magazine the inspector says: "I do not believe that material is safe. This explosive does not look right. The magazine is not in good shape. These boxes are standing. Possibly there are leakages there." A small sample, as provided in the act, is sent to the chemist at South Amboy, and he investigates whether the material is liable to leak in transit and cause an explosion. I say the railroads are thoroughly roused up over this situation. Mr. Smith, the general manager of the New York Central, likewise came to the meeting of the bureau last week and was most emphatic in his statements. I told you yesterday that we had 17 inspectors. The present plan involves 25. It is simply a question of money to get 25. The ultimate plan to cover the United States involves 40 local inspectors, as we call them, men riding around on the railroads, going to the magazines and factories and seeing that the loading is properly done, in accordance with the regulations, and so forth. Mr. Smith said: "I do not care what it costs. We have got to have this protection that comes from the enforcement of these regulations."

Mr. RUSSELL. I want to ask you a question about the regulations. Are you insisting upon this section No. 7 now?

Doctor DUDLEY. If you will allow me just a moment, I would like to take up the relations of the two parts of the bill. We have assumed, gentlemen, that the ordinary criminal features of the bill,

that is, the part that has to do with the fine and imprisonment, if necessary, would be handled by prosecuting attorneys, grand juries, and the courts. We do not see how we could introduce into the bill anything that would supersede those features in the criminal side of the bill. If a man, for instance, is careless in his handling of explosives while in transit; if he puts, for example, a carload of explosives by the side of a pile of ties along the road, and stops it there, and the car takes fire and is burned up through his carelessness, absolutely criminal carelessness, we do not see how we could take the punishment for that out of the hands of the courts.

Mr. BARTLETT. Ordinarily the man would not have money enough to pay any fines—the man who did that?

Doctor DUDLEY. I suppose he would have to go to jail in that case. On the other hand, the other feature of the bill, what we call the arbitration feature, which is embodied in section 7, is for this purpose: Suppose the transporters and manufacturers did not agree. As a matter of fact, at the present moment they are a unit and are working together. They have gone over the details of this bill together. They think it the wisest thing possible, and there is no lack of harmony now. But suppose there should come a time when there should be a lack of harmony, and the question should come up, What are the best practical regulations for the transportation of explosives? We thought that instead of letting that matter go before the courts, where it would take about a year to get a decision, it might be advisable to have some means by which a quick decision could be reached. I have said already that the ultimate responsibility rests with the transportation companies, and they might arbitrarily say that is final; but in order to provide a fair means of adjusting difficulties of that kind, which at present are handled by consultation—and as long as there is good feeling the consultations will handle it—in order to provide fair means and not seem unduly arbitrary in the matter section 7 was provided. This enables us to get a quick decision. As I stated yesterday, there is a constant change in explosive matters.

Mr. RUSSELL. Have you had any opinion given to you by the legal department on section 7?

Doctor DUDLEY. Yes.

Mr. SHERMAN. On the proposed section 7?

Doctor DUDLEY. Yes.

Mr. SHERMAN. Here is the originally proposed section 7 which I objected to, and then they framed this section 7 to meet my objections.

Mr. RUSSELL. I want to ask you if you have had this question discussed by your legal department with reference to this section 7. You attempt to provide in here that where there is a controversy between the shipper and the carrier as to what is a reasonable and practicable regulation as to the shipment of explosives, when they can not settle the question it is remanded to the Interstate Commerce Commission, and the decision of the Interstate Commerce Commission shall be final until overthrown by the circuit court, and then you give the circuit court jurisdiction. Now, suppose you have that proposition up, and the Interstate Commerce Commission sets out the regulations which it says are the best known practicable regulations, and the carrier complying with those regulations under-

takes to transport the explosives, and en route it explodes and great damage is wrought, and an action for damages is brought. Has your legal department given you any opinion as to whether the defendant, by virtue of the fact that it had adopted the regulations of the Interstate Commerce Commission, would be setting up a good defense in an action of damages?

Doctor DUDLEY. No, sir. We hope to escape the responsibility for an action of damages. After I left here I talked with General Henderson, general solicitor of the Southern Railway, over the case resulting from an explosion of dynamite at Jellico last summer, and——

Mr. RUSSELL. You think you could dispute the proposition that you had adopted the best regulations, notwithstanding the Interstate Commerce Commission had adopted regulations which you did adopt?

Doctor DUDLEY. I would like to say, for the information of the committee, that the last part of that clause, of that original section 7, the one you mention there, was drawn by Mr. Massey, the general counsel of the Pennsylvania Railroad. I was in his own office with him. I had had the matter submitted to him by correspondence first, and had an interview with him later, and he drew the last part of that section. I do not know, Mr. Russell, that I quite grasp what you mean.

Mr. RUSSELL. Here is a proposition to let the Interstate Commerce Commission say in a certain contingency what is the best practicable regulation. Suppose they do prescribe what they say is the best known practicable regulation governing the shipment of explosives: An action for damages is brought; the plaintiff contends that the best known practicable regulation has not been adopted and offers the proof. Now would that section cut him off?

Doctor DUDLEY. I do not think so, sir, and I do not think it was intended that it should. It would be a constant stimulus to the railroads who make these regulations to keep them up to date. Now, for example, I think I see a case where your point would apply. Let us suppose that there are certain precautions taken by the English people, and they have been at this longer than we have. They have been at it since 1871, and we have been at it only about fifteen years, or eighteen or twenty years perhaps. Let us suppose that they have adopted certain precautions that we do not adopt. Now, therefore, a plaintiff would say against the railroad company, "Why, here are precautions that are better than yours." That would be a question for the jury, sir. We would not hope to shirk the responsibility for what we have primarily introduced as our regulations.

The CHAIRMAN. Suppose, under section 6, that a man is indicted, or a company is indicted, for transporting an explosive because it was not in proper condition to transport in accordance with the best known practicable regulations for securing safety. Suppose now you are engaged in the trial of an indictment, what is the effect of section 7 in the event of any controversy or question arising as to what constitutes the best known practicable regulations for insuring safety? That it shall be submitted to the Interstate Commerce Commission. You would stop your trial under that indictment and refer this question under the terms of the law to the Interstate Commerce Commission. It would take it away from the jury.

Doctor DUDLEY. Do you think so?

The CHAIRMAN. Certainly.

Doctor DUDLEY. We would regard this section as purely arbitral.

The CHAIRMAN. It makes it decisive in any controversies arising. The language is as broad as it can be, "In the event of any controversy or question arising as to what constitutes the best known practicable regulations for securing safety," etc.

Doctor DUDLEY. Would not this be the case—would there not be two issues, namely, here in the case you suppose is a criminal action brought, and in the other case the question at issue is not a criminal action?

Mr. BARTLETT. It is not a criminal action; it is a criminal indictment. The action is to recover money.

Doctor DUDLEY. Well, criminal indictment. In the other case it is a case of what is the best regulation. It has nothing to do with crime in any shape or form. I do not hardly see how we could construe section 7 as having anything to do with the criminal features of the bill.

Mr. RUSSELL. You make the Commission the final arbiter as to what is the best known practicable regulation, and still the finding of the Commission on that point has been set aside by a circuit court?

Doctor DUDLEY. Yes.

Mr. STEVENS. That would only affect the parties to that controversy and nobody else?

Doctor DUDLEY. Yes, so far as we can see; except that all decisions, as I understand them, have their lessons and carry an influence and are usually made use of.

Mr. STEVENS. It would be used in any other case?

Doctor DUDLEY. If the Supreme Court decides something, it becomes part of the law of the land and everybody guides himself accordingly, so that if a decision was reached by the Interstate Commerce Commission on the point submitted it would become well known and become part of the regulations and affect everybody whose interests are involved.

Mr. STEVENS. It would not bind me.

Doctor DUDLEY. So far as deciding the question as to what are the best known practicable regulations for the transportation of explosives in all previous legislation that we have known anything about, the act itself has attempted to cover the regulations. The English explosive act, passed in 1871, is a small book. To be perfectly frank with you, it is a book about as long and about as wide as that [indicating a book] and half as thick. It goes into a great many details. It classifies explosives. It gives a great many characteristics. It does not especially give regulations for transportation, but endows the chief inspector with power to promulgate or help to get regulations made for the transportation of explosives, recognizing the necessity for possible change, due to the growth of knowledge. The secretary of state for home affairs is entitled to issue orders in council, modifying almost anything in the act, except the prime principles proposed, and the bundle of decisions already rendered in regard to that act and the orders in council are almost as big as the act itself.

Now, our idea was this: We must have something flexible, and something that will meet changing conditions from time to time. If

any particular feature gets tied up in an act of Congress, it would take a long time to change it. Legislation that was applicable forty years ago is no longer applicable, although it is still on the statute books.

Mr. ESCH. Would that apply to the invention of an entirely new explosive, for instance, which in the handling could not be handled by your existing rules and regulations? You would have to suddenly change all your rules and regulations to transport it?

Doctor DUDLEY. Yes; and there is a proviso in the regulations of the bureau; one item in the constitution of the association is that no new explosive shall be received for transportation until it has been examined and tested and approved by the chief inspector. We have made that condition, you see, in our practical carrying out of things.

Mr. ESCH. Do your rules provide that if I discover a new explosive, I can not tender it to a common carrier and have it carried until it is examined by this particular bureau, which is entirely outside the law?

Doctor DUDLEY. Yes. Under the laws, as we understand them, every railroad is entitled to reject any freight and refuse to transport it if it is regarded as too hazardous to transport. That is the rule of every railroad that I know of. Under the laws regulating common carriers we are compelled to transport freight received, but we are not required to receive everything. The breweries in Pennsylvania, for example, dry the brewers' grains. The grains are shipped abroad in shiploads. The old method was to feed the grains to cattle. Now, methods have been devised of drying those brewers' grains and shipping them to Europe. We had seven fires within two weeks, produced by spontaneous combustion in transit. I was sent over to the distilleries or breweries to see what the trouble was, and I found that the difficulty was that the grains were not completely dried out; the drying apparatus was not thoroughly efficient. I had a barrel of the dried grains sent to Altoona, and I put a large quantity of it in an insulated vessel and put moisture into the vessel, and found that the incubation period by which heat would be generated to a dangerous point was four days. My point is this, that every railroad company is absolutely entitled to reject and refuse to receive material that will cause loss in transit. This whole matter is referred now to the bureau for the safe transportation of explosives and other dangerous articles. Formerly, so far as the Pennsylvania Railroad was concerned, it was all referred to me. I am the chemist, you know, of the Pennsylvania Railroad. We made many investigations of spontaneous combustion, and our only remedy is to reject and refuse to receive goods offered until we get the proper information thereon.

Mr. MANN. Doctor, would it bother you to come back to the proposed section No. 7?

Doctor DUDLEY. No, sir.

Mr. MANN. What do you mean when you say, "In the event of any controversy arising as to what constitutes the best known practicable regulations?" What do you mean by "controversy?"

Doctor DUDLEY. Any controversy between the shipper and the transporter. I will give you a case—

Mr. MANN. Suppose a shipper offers goods to the railroad company, and there is a controversy there. That particular case is to be referred to the Interstate Commerce Commission?

Doctor DUDLEY. That is right.

Mr. MANN. And they will probably have to wait for a year before the Interstate Commerce Commission could act?

Doctor DUDLEY. We would hope to get action at once.

Mr. MANN. You have great hope.

Doctor DUDLEY. Yes.

Mr. MANN. Would that decision bind future shipments?

Doctor DUDLEY. Yes.

Mr. MANN. Do you mean to say that somebody not a party to the controversy would be bound by that?

Doctor DUDLEY. Yes; by that decision. That is, the railroad company would compel him to go through the same detail. That would be the position we would take. We would say, "Gentlemen, this matter is decided. It has been adjudicated by the Interstate Commerce Commission, and decided so and so." So that we would have absolutely the protection we need.

Mr. MANN. Here is the point I was getting at: You then provide that after the Interstate Commerce Commission makes a ruling, that stands until reversed or set aside or modified by the circuit court, and it may confer upon the circuit court the power to modify those rules and regulations. Did your legal department tell you that the courts had the power to modify rules and regulations in reference to the shipment of freight?

Doctor DUDLEY. We think so. The internal regulations of a railroad are not the law of the land, necessarily; but we think the courts would be inclined to uphold them.

Mr. MANN. In advance of a suit?

Doctor DUDLEY. No.

Mr. MANN. The proposition I put to you is in advance of a suit.

Doctor DUDLEY. I do not understand you. I do not see how there can be any question until there is a suit brought.

Mr. MANN. Suppose a man brings a carload of explosives to the Pennsylvania Railroad for shipment. You say he is obliged to do certain things, and he says he is not obliged to do them. Is he then to bring suit against the Pennsylvania Railroad?

Doctor DUDLEY. Yes.

Mr. MANN. This says, "In the event of a controversy arising." Nothing is said about suits being brought.

Doctor DUDLEY. The subject is to be referred for decision to the Interstate Commerce Commission.

Mr. MANN. Is the suit to be brought first?

Doctor DUDLEY. I did not understand you. We provided in the original section that the board which shall be constituted shall—

Mr. MANN. That original section has nothing to do with this.

Doctor DUDLEY. Yes; but allow me just one second. The point I wanted to make was this: The parties interested, who feel themselves aggrieved, appeal to the Interstate Commerce Commission. That is the procedure as we understand it.

Mr. MANN. That is before the suit is brought in court?

Doctor DUDLEY. Oh, yes. The suit is final, the last thing.

Mr. MANN. You mean a petition in the Interstate Commerce Commission, not a suit in court? Do you make a distinction between a suit in court and a petition before the Interstate Commerce Commission?

Doctor DUDLEY. I think there is a misunderstanding between us. We do not grasp each other's meaning. See if I can make it clear to you. We suppose that the transportation companies think it essential that every package of black powder, for example, shall be done up with a muslin bag around it, so as to prevent explosion. That is the universal practice in Europe, not in this country. Now, let us assume that the transportation companies, or the American Railroad Association, puts that into its regulations. Now, then, the manufacturers say, "We can not stand that. That is going to increase the cost. We do not believe it is necessary, and we do not want to do that thing. We do not want to put a muslin bag inside the metal keg to be shipped to the miners." That is commonly known as the double package, technically. Now, the manufacturing company says, "That is not necessary." Therefore there is a controversy. The transportation companies have said that is the best known practicable means for preventing danger or securing safety in transportation. The manufacturers say, "We can not stand it, and we do not think it is necessary." Now, then, the manufacturers under these circumstances appeal to the Interstate Commerce Commission for a quick decision, and in that decision one party or the other to the controversy is sustained, according to the evidence produced. Now, after the decision is reached—let us assume that the decision is against the transportation companies—the transportation companies say, "We are not satisfied with that decision, and we will appeal to the circuit court," and the record of the case before the Interstate Commerce Commission becomes a part of the case, to go before the court.

Now, I would like to say that that feature of providing an appeal was added for the sake of, and in accordance with, the discussion in Congress last year over the rate bill; the question whether the railroads could appeal from the Interstate Commerce Commission to the courts was, as you know, very much talked about, and so we thought it would be unfair to get a quick decision that was not subject to revision. Now, to my mind the whole thing is perfectly clear—

Mr. MANN. I think it has never been claimed that the court had the power to do anything except decide whether the rules fixed by the Interstate Commerce Commission were reasonable rules. They can not say what the rate shall be. They can not determine what the regulations shall be.

Doctor DUDLEY. They could approve of the findings of the Interstate Commerce Commission in any case, or could set them aside.

Mr. STEVENS. They could set them aside in a judicial case, but this is an administrative work. This is a work of executive authority, not of judicial authority.

Mr. MANN. And not only that, but you give them the power to make new regulations, which is clearly unconstitutional. I think the constitutionality of it goes to the whole form that you have here. It would make the whole law unconstitutional.

Mr. STEVENS. I think so, too. It is an administrative function that they are trying to confer upon the courts.

Mr. MANN. They are trying a case in advance of a suit in court. If the man who offered the powder commenced a proceeding in court to compel you to take it, or sued you for damages for refusing to take it, the court would have to determine what is a reasonable regulation. But this is merely a moot case.

Doctor DUDLEY. As I have explained the procedure, I do not quite see the point you make.

Mr. MANN. I think that is the reason why Mr. Russell probably asked you if this was a matter that had passed through the hands of the counsel of the company.

Mr. BARTLETT. Would it not be true that whether the requirements were the best known or not was purely a question of fact, and not a question of construction of law? It was not a construction of law, but a question of fact?

Doctor DUDLEY. Yes; a fact proved by witnesses.

Mr. MANN. Before a suit was brought?

Mr. BARTLETT. You will find they will not take any jurisdiction of it, if it ever is sent to them.

Doctor DUDLEY. I would like to say again that that general section and the bill itself was passed upon by Mr. Massey, the general solicitor of the Pennsylvania Railroad. Of course I am not a lawyer to follow you in this matter, and I do not quite see how the court is called upon to make any decision before a suit is brought.

Mr. STEVENS. It would not make any decision.

Doctor DUDLEY. Yet I understand that Mr. Mann makes that point.

Mr. BARTLETT. The Supreme Court would throw you out.

Doctor DUDLEY. The case would be brought, and brought first by the so-called injured party, before the Interstate Commerce Commission.

Mr. MANN. I see what your point is. It seems to me, though, that a petition of a party to ask a United States circuit court to determine what are the best known practicable regulations for transporting explosives is not a suit, within the meaning of the law.

Doctor DUDLEY. How about patents? The most complicated and difficult things are brought before the courts, and it is a question of expert testimony.

Mr. MANN. We could not confer upon the courts the power to determine whether a man's patent was valid or not. The court would not determine the question, and the court never attempts to until there is a controversy between two different persons of adverse interests.

Doctor DUDLEY. That is exactly what we have in mind here—a suit between the manufacturer and the transportation company.

Mr. MANN. Do you know how many manufacturers of high explosives there are that would be affected by this bill?

Doctor DUDLEY. I can not tell you the total number of high-explosive manufacturers, but we know that there are now in existence, with the possibility that we have not gotten the whole of them, 147 manufacturers of explosives. I can not give you the details.

Mr. MANN. They would be affected by this legislation?

Doctor DUDLEY. Yes; and there are 17 fireworks manufacturers.

Mr. MANN. Where are they located, generally?

Doctor DUDLEY. There is one on the Ann Arbor Railroad, one on the Arkansas Central, two on the Atchison, Topeka and Santa Fe, and—

Mr. SHERMAN. What States? That is what we want.

Doctor DUDLEY. The principal portions of them are in Pennsylvania and New Jersey, generally.

Mr. SHERMAN. Have you a table there?

Doctor DUDLEY. Yes.

Mr. SHERMAN. Will you leave it with the stenographer?

Doctor DUDLEY. With pleasure.

(Following is the document referred to:)

[Printed for use of members of the association only.]

■ THE AMERICAN RAILWAY ASSOCIATION.

List of manufacturers of explosives.

[Compiled by the Bureau of Explosives, January 1, 1908. * Lines not members of the Bureau of Explosives.]

- *Ann Arbor Railroad: Great Western Powder Company, Toledo, Ohio.
- *Arkansas Central Railway: Equitable Powder Manufacturing Company, Fort Smith, Ark.
- *Atchison, Topeka and Santa Fe Railway: Pennsylvania and Kansas Plant (Du Pont), Pittsburg, Kans.; Trojan Safety Powder Company, Overton, Colo.
- Atchison, Topeka and Santa Fe Railway (coast lines): Giant Powder Company (Consolidated), Giant, Cal.; Hercules Plant (Du Pont), Hercules, Cal.; Vigorite Plant (Du Pont), Vigorite, Cal.
- Atlantic Coast Line Railroad: Romaine & Co. (fireworks), Petersburg, Va.
- *Baltimore and Ohio Railroad: American High Explosives Company, New Castle, Pa.; Austin Powder Company, Brooklyn, Ohio; Burton Powder Company, Hillsville, Pa.; Columbia Firecracker Company, Fostoria, Ohio; Fairchance Plant (Du Pont), Fairchance, Pa.; Kellogg Plant (Du Pont), Central City, W. Va.; Meadow Brook Plant (Du Pont), Meadow Brook, W. Va.; Pittsburg Fulminate Company, Zelienople, Pa.; Rand Powder Company, Rand, Pa.; Rockdale Powder Company, Hoffmansville, Md.; Youngstown Plant (Du Pont), Youngstown, Ohio.
- Bangor and Aroostook Railroad.
- *Bay of Quinte Railway: Ontario Powder Company, Tweed, Ontario.
- *Beaumont, Sour Lake and Western Railway: Texas Dynamite Company, Beaumont, Tex.
- Bessemer and Lake Erie Railroad.
- Boston and Maine Railroad: American Powder Mills, Maynard, Mass.; American Smokeless Powder Company, South Acton, Mass.; Royal Block Powder Company, Gorham, Me.; Schaghticoke Plant (Du Pont), Schaghticoke, N. Y.
- *Buffalo and Susquehanna Railroad: Sinnemahoning Powder Manufacturing Company, Sinnemahoning, Pa.
- Buffalo Creek Railroad.
- Buffalo, Rochester and Pittsburg Railway: American High Explosives Company, New Castle, Pa.; Riker Plant (Du Pont), Punxsutawney, Pa.; Rochester Fireworks Company, Rochester, N. Y.
- *Canadian Pacific Railway: General Explosives Company (Canada), Hull, Quebec; Giant Powder Company, Telegraph Bay, British Columbia; Hamilton Powder Company, Departure Bay, British Columbia; Hamilton Powder Company, Northfield, British Columbia; Hamilton Powder Company, Windsor Mills, Quebec; Hand Fireworks Company, Hamilton, Ontario; J. C. Mitchell Smokeless Powder Company, Medicine Hat, Alta.; Ontario Powder Company, Tweed, Ontario; Standard Explosive Company, Vaudreuil, Quebec.
- *Central New England Railway: Ensign & Bickford Company, Simsbury, Conn.
- Central of Georgia Railway: Jefferson Powder Company, Birmingham, Ala.; Sterling Plant (Du Pont), Birmingham, Ala.
- Central Railroad of New Jersey: Detwiler & Street Fireworks Company, Jersey City, N. J.; Enterprise Plant (high explosives) (Du Pont), Nesquehoning, Pa.; Enterprise Plant (black powder) (Du Pont), Penobscot, Pa.; Forcite Plant (Du Pont), Hopatcong, N. J.; General Explosives Company, Lake Junction, N. J.; Gracedale Plant (Du Pont), Gracedale, Pa.; Kenvil Plant (Du Pont), Kenvil, N. J.; Mauch Chunk Plant (Du Pont), Mauch Chunk, Pa.; Miller, J. S. (black powder), White Haven, Pa.; Miller, J. S. Powder Company (dynamite), White Haven, Pa.; Moosic Plant (black powder) (Du Pont), Moosic, Pa.; Oliver Plant (Du Pont), Laurel Run, Pa.; Picatinny Arsenal, Dover, N. J.; Star Electric Fuze Company, Wilkesbarre, Pa.
- Central Vermont Railway Company: Robin Hood Ammunition Company, Swanton, Vt.
- Chesapeake and Ohio Railway: Kellogg Plant (black powder) (Du Pont), Central City, W. Va.

*Chicago and Alton Railroad: Equitable Powder Manufacturing Company, East Alton, Ill.

Chicago and Eastern Illinois Railroad: Etna Powder Company (Western), Thebes, Ill.; Egyptian Powder Company, Marion, Ill.; Miami Powder Company, Fayville, Ill.

Chicago and North Western Railway: Pleasant Prairie Plant (Du Pont), Pleasant Prairie, Wis.

Chicago and Western Indiana Railroad.

Chicago, Burlington and Quincy Railroad: Ashburn Plant (Du Pont), Ashburn, Mo.; Buckeye Powder Company, Edwards, Ill.; Equitable Powder Manufacturing Company, East Alton, Ill.; Moobar Plant (Du Pont), Moobar, Iowa.

Chicago, Indianapolis and Louisville Railway: United States Powder Company, Linton, Ind.

*Chicago, Peoria and St. Louis Railway: Illinois Powder Manufacturing Company, Grafton, Ill.

Chicago, Rock Island and Gulf Railway.

Chicago, Rock Island and Pacific Railway: Trojan Safety Powder Company, Overton, Colo.; Patterson Plant (Du Pont), Patterson, Okla.

Chicago, St. Paul, Minneapolis and Omaha Railway: Barksdale Plant (Du Pont), Barksdale, Wis.

Cincinnati and Muskingum Valley Railroad.

Cincinnati, Bluffton and Chicago Railroad.

*(Cincinnati, Hamilton and Dayton Railway: Etna Powder Company (fuze), Xenia, Ohio; A. L. Due fireworks Company, Lockland, Ohio; Great Western Powder Company, Toledo, Ohio; Miami Powder Company, Goes Station, Ohio.

Cincinnati, New Orleans and Texas Pacific Railway: Sterling Plant (Du Pont), Lewisburg, Ala.

Cincinnati Northern Railroad.

Cleveland, Akron and Columbus Railway.

Cleveland, Cincinnati, Chicago and Saint Louis Railway (Big "4"): Berea Novelty Company, Berea, Ohio; Consolidated Fireworks Company, Reading, Ohio; Crescent Novelty Company, Berea, Ohio; Del Grande Fireworks Company, Paris, Ill.; E. Hebenstreet (fireworks), Lockland, Ohio; Equitable Powder Manufacturing Company, East Alton, Ill.; Fontanet Plant (Du Pont), Fontanet, Ind.; Great Western Powder Company, Toledo, Ohio; H. P. Diehl fireworks Company, Lawrenceburg, Ind.; A. L. Due fireworks Company, Lockland, Ohio.

Coal and Coke Railway.

*Colorado and Southern Railway: Trojan Safety Powder Company, Overton, Colo.

*Copper Range Railroad: Hancock Chemical Company, Dollar Bay, Mich.

Cumberland Valley Railroad.

Delaware and Eastern Railroad.

Delaware and Hudson Company: Consumers' Plant (Du Pont), Peckville, Pa.; Kline-Buss Smokeless Explosive Company, Rocky Glen, Pa.; Moosic Plant (Du Pont), Moosic, Pa.; Rushdale Plant (Du Pont), Jermyn, Pa.; Star Electric Fuze Company, Wilkes-Barre, Pa.

*Delaware, Lackawanna and Western Railroad: Consumers' Plant (Du Pont), Peckville, Pa.; Forcite Plant (Du Pont), Hopatcong, N. J.; General Explosives Company, Lake Junction, N. J.; Picatinny Arsenal, Dover, N. J.

*Denver and Rio Grande Railroad: Trojan Safety Powder Company, Overton, Colo.

Detroit and Mackinac Railway: Ajax Powder Company, Bay City, Mich.

Detroit and Toledo Shore Line Railroad: Great Western Powder Company, Toledo, Ohio.

*Detroit, Toledo and Milwaukee Railroad: Great Western Powder Company, Toledo, Ohio.

*Duluth, South Shore and Atlantic Railway: Marquette Plant (Du Pont), Marquette, Mich.

Eastern Railway of New Mexico.

El Paso and Southwestern System.

Erie Railroad: Austin Cartridge Company, Falls Junction, Ohio; Austin Powder Company, Falls Junction, Ohio; Electric Device Company, Sharon, Pa.; Haskell Plant (Du Pont), Haskell, N. J.; Kline-Buss Smokeless Explosive Company, Rocky Glen, Pa.; Macbeth Fuse Works, Pompton Lake, N. J.; Masurite Explosive Company, Masury, Ohio; Metallic Cap Manufacturing Company, Pompton Lake, N. J.; Moosic Plant (Du Pont), Moosic, Pa.; Oakland Plant (Du Pont), Oakland, N. J.; Rochester Fireworks Company, Rochester, N. Y.; Wayne Plant (Du Pont), Wayne, N. J.; Youngstown Plant (Du Pont), Youngstown, Ohio.

Erie and Michigan Railway.

*Esquimalt and Nanaimo Railway: Hamilton Powder Company, Departure Bay, British Columbia; Hamilton Powder Company, Northfield, British Columbia.

- Evansville and Terre Haute Railroad.
- * Fort Smith and Western Railroad: Equitable Powder Manufacturing Company, Fort Smith, Ark.
- Georgia and Florida Railway.
- Georgia Coast and Piedmont Railroad.
- Grand Rapids and Indiana Railway.
- Grand Trunk Railway System: Ajax Dynamite Company, Bay City, Mich.; General Explosives Company of Canada, Hull, Quebec; Hamilton Powder Company, Belœil, Quebec; Hamilton Powder Company, Windsor Mills, Quebec; Hand Fireworks Company, Hamilton, Ontario; Robin Hood Ammunition Company, Swanton, Vt.; Standard Explosives Company, Vaudreuil, Quebec.
- * Great Northern Railway: Maury Powder Company, Maury Island, Wash.; Randanite Powder Company, Mukliteo, Wash.
- Gulf, Colorado and Santa Fe Railway: Texas Dynamite Company, Beaumont, Tex.
- Hocking Valley Railway: Columbia Firecracker Company, Fostoria, Ohio; Great Western Powder Company, Toledo, Ohio.
- Illinois Central Railroad: Etna Powder Company, Thebes, Ill.; Belleville Plant (Du Pont), Belleville, Ill.; Egyptian Powder Company, Marion, Ill.; Majestic Powder Company, Greenup, Ill.; Miami Powder Company, Thebes, Ill.; Sycamore Plant (Du Pont), Ashland City, Tenn.
- Indianapolis Southern Railroad (Illinois Central): United States Powder Company, Linton, Ind.
- * Intercolonial Railway of Canada: Acadia Powder Company, Waverly, Nova Scotia. Jamestown, Chautauqua and Lake Erie Railroad.
- * Kansas City Southern Railway: Equitable Powder Manufacturing Company, Fort Smith, Ark.; Joplin Plant (Du Pont), Cagle Station, Mo.; Pennsylvania and Kansas Plant (Du Pont), Pittsburg, Kans.; Texas Dynamite Company, Beaumont, Tex.
- Kansas Southwestern Railway.
- Lake Erie and Western Railroad: Columbia Firecracker Company, Fostoria, Ohio.
- Lake Shore and Michigan Southern Railway: American Dynalite Company, Amherst, Ohio; Austin Powder Company, Brooklyn, Ohio; Berea Novelty Company, Berea, Ohio; Crescent Novelty Company, Berea, Ohio; Electric Device Company, Sharon, Pa.; Great Western Powder Company, Toledo, Ohio; Masurite Explosive Company, Masury, Ohio; Youngstown Plant (Du Pont), Youngstown, Ohio.
- * Lackawanna and Wyoming Valley Railroad: All American Powder Company, South Avoca, Pa.; Kline-Buss Smokeless Explosive Company, Rocky Glen, Pa.; Moosic Plant (Du Pont), Moosic, Pa.
- Lehigh and New England Railroad.
- Lehigh Valley Railroad: Cressona Powder Company, Cressona, Pa.; D. C. Rand Powder Company, Pittsford, N. Y.; Enterprise Plant (Du Pont), Penobscot, Pa.; Gracedale Plant (Du Pont), Gracedale, Pa.; J. S. Miller (Black Powder), White Haven, Pa.; J. S. Miller Powder Company (dynamite), White Haven, Pa.; Lofty Powder Company, Lofty, Pa.; Nuremberg Powder Company, Tomhicken, Pa.; Oliver Plant (Du Pont), Laurel Run, Pa.; Rochester Fireworks Company, Rochester, N. Y.; Star Electric Fuze Company, Wilkesbarre, Pa.
- * Long Island Railroad: Pains Fireworks, Parkville, L. I.
- Louisville and Nashville Railroad: Belleville Plant (Du Pont), Belleville, Ill.; Connable Plant (Du Pont), Birmingham, Ala.; Jefferson Powder Company, Birmingham, Ala.; Rand Powder Company, Dossett, Tenn.; Sterling Plant (Du Pont), Lewisburg, Ala.; Tennessee Powder Company, Jellico, Tenn.
- Louisville, Henderson and St. Louis Railroad.
- * Maine Central Railroad: Royal Block Powder Company, Gorham, Me.
- * Marquette and Southeastern Railway: Marquette Plant (Du Pont), Marquette, Mich.
- * Mary Lee Railroad: Connable Plant (Du Pont), Birmingham, Ala.; Sterling Plant (Du Pont), Lewisburg, Ala.
- * Mexican Central Railway: National Dynamite Company of Mexico, Dinamita, Durango.
- Michigan Central Railroad: Ajax Dynamite Company, Bay City, Mich.; Great Western Powder Company, Toledo, Ohio.
- * Midland Valley Railroad: Equitable Powder Company, Fort Smith, Ark.
- * Mineral Range Railroad: Hancock Chemical Company, Dollar Bay, Mich.
- Missouri, Kansas and Texas Railway: Joplin Plant (Du Pont), Cagle Station, Mo.; Patterson Plant (Du Pont), Patterson, Okla.
- Missouri Pacific Railway: Egyptian Powder Company, Marion, Ill.; Independent Powder Company, Carthage, Mo.; Joplin Plant (Du Pont), Cagle Station, Mo.; Pennsylvania and Kansas Plant (Du Pont), Pittsburg, Kans.; Trojan Safety Powder Company, Overton, Colo.

Muscatine North and South Railway.

* National Railroad of Mexico: National Dynamite Company of Mexico, Dinamita, Durango.

New Orleans and Northeastern Railroad.

New York and Ottawa Railway.

New York Central and Hudson River Railroad: D. C. Rand Powder Company (black powder), Pittsford, N. Y.; Nitro Powder Company, Port Ewen, N. Y.; Rochester Fireworks Company, Rochester, N. Y.; Rosendale Plant (Du Pont), Rosendale, N. Y.; United States Naval Station, Iona Island, N. Y.

* New York, Chicago and St. Louis Railroad: Columbia Firecracker Company, Forestoria, Ohio.

* New York, New Haven and Hartford Railroad: American Powder Mills, Maynard, Mass.; American Smokeless Powder Company, Maynard, Mass.; Ensign & Bickford Company, Simsbury, Conn.; Hazardville Plant (Du Pont), Hazardville, Conn.

New York, Ontario and Western Railway: Consumers Plant (Du Pont), Peckville, Pa.; Nitro Powder Company, Kingston, N. Y.; Rushdale Plant (Du Pont), Jermy, Pa.

New York, Philadelphia and Norfolk Railroad.

Norfolk and Southern Railroad.

Norfolk and Western Railway: Nemours Plant (Du Pont), Nemours, W. Va.; Romaine & Co. (fireworks), Petersburg, Va.

* Northern Pacific Railway: Maury Powder Company, Maury Island, Wash.

Oregon Railroad and Navigation Company.

Oregon Short Line Railroad.

Pennsylvania Railroad: Carneys Point Plant (Du Pont), Carneys Point, N. J.; Eastern Dynamite Company, Emporium, Pa.; Electric Device Company, Sharon, Pa.; Emporium Plant (Du Pont), Emporium, Pa.; Emporium Powder Manufacturing Company, Emporium, Pa.; Fairchance Plant (Du Pont), Fairchance, Pa.; Frankford Arsenal, Frankford, Pa.; Joseph Scalina (fireworks), New Naples, N. J.; Keystone Powder Manufacturing Company, Emporium, Pa.; McAbee Powder and Oil Company, Tunnelton, Pa.; Nuremburg Powder Company, Tomhicken, Pa.; Repauno Plant (Du Pont), Gibbstown, N. J.; Riker Plant (Du Pont) (shut down), Punxsutawney, Pa.; Rochester Fireworks Company, Rochester, N. Y.; Rockdale Powder Company, Hoffmannsville, Md.; Royal High Explosives Company, York, Pa.; Shamokin Powder Company, Shamokin, Pa.; Sinnemahoning Powder Company, Sinnemahoning, Pa.; Standard Powder Company, Horrell Station, Pa.; Star Electric Fuze Company, Wilkes-Barre, Pa.; Wapwollopen Plant (Du Pont), Wapwollopen, Pa.

Pennsylvania Lines (West): Etna Powder Company (fuse), Xenia, Ohio; A. L. Due Fireworks Company, Lockland, Ohio; American High Explosives Company, Coverts Station, Pa.; Austin Powder Company, Brooklyn, Ohio; Burton Powder Company, Coverts Station, Pa.; Great Western Powder Company, Toledo, Ohio; Hartford City Plant (high explosives) (Du Pont), Hartford City, Ind.; King Powder Company, Kings Mills, Ohio; Masurite Explosive Company, Masury, Ohio; Miami Powder Company, Goes, Ohio; Senior Powder Company, Morrow, Ohio; Youngstown Plant (Du Pont), Youngstown, Ohio.

Peoria and Eastern Railway.

* Pere Marquette System: Ajax Dynamite Company, Bay City, Mich.; Great Western Powder Company, Toledo, Ohio.

Philadelphia and Reading Railway: Allentown Non-Freezing Company, Jordan Bridge, Pa.; Black Diamond Powder Company, Haucks Station, Pa.; Brandywine Plant (Du Pont), Montchanin, Del.; Carneys Point Plant (Du Pont), Carneys Point, N. J.; Connell Powder Company, Trevorton, Pa.; Cressona Powder Company, Cressona, Pa.; Economy Powder Company, Wyomissing, Pa.; Experimental Station (Du Pont), Newbridge, Del.; Ferndale Plant (Du Pont), Ringtown, Pa.; Frankford Arsenal, Frankford, Pa.; Lakeside Powder Company, East Mahanoy Junction, Pa.; Locust Mountain Powder and Dynamite Company, Krebs Station, Pa.; Lofty Powder Company, Lofty, Pa.; Pennsylvania Powder, Dynamite and Fuse Company, Brandonville, Pa.; Potts Powder Company, Reynolds, Pa.; Repauno Plant (Du Pont), Gibbstown, N. J.; Roberts Powder Company, Krebs, Pa.; Shamokin Powder Company, Shamokin, Pa.; Shenandoah Plant (Du Pont), Krebs Station, Pa.; Tamaqua Plant (Du Pont), Tamaqua, Pa.

Pittsburg and Lake Erie Railroad: American High Explosives Company, New Castle, Pa.; Burton Powder Company, Quaker Falls, Pa.; Youngstown Plant (Du Pont), Youngstown, Ohio.

Pittsburg, Lisbon and Western Railroad.

Raleigh and Charleston Railroad.

- * Raritan River Railroad: Parlin Plant (Du Pont), Parlin, N. J.
 - Rutland Railroad.
 - * St. Johnsbury and Lake Champlain Railroad: Robin Hood Ammunition Company, Swanton, Vt.
 - St. Joseph and Grand Island Railway.
 - St. Louis and San Francisco Railroad: Columbus Plant (Du Pont), Turck, Kans.; Equitable Powder Manufacturing Company, Fort Smith, Ark.; Excelsior Powder Manufacturing Company, Holmes Park, Mo.; Jefferson Powder Company, Birmingham, Ala.; Joplin Plant (Du Pont), Cagle Station, Mo.; Pennsylvania and Kansas Plant (Du Pont), Pittsburg, Kans.; Sterling Plant (Du Pont), Lewisburg, Ala.
 - St. Louis, Brownsville and Mexico Railway.
 - St. Louis, Iron Mountain and Southern Railway (Missouri Pacific Railway): Aetna Powder Company, Thebes, Ill.; Equitable Powder Manufacturing Company, Fort Smith, Ark.; Miami Powder Company, Thebes, Ill.
 - St. Louis Southwestern Railway System: Aetna Powder Company (Western), Thebes, Ill.; Miami Powder Company, Thebes, Ill.
 - San Antonio and Aransas Pass Railway.
 - Seaboard Air Line Railway: Jefferson Powder Company, Birmingham, Ala.; Romaine & Co. (fireworks), Petersburg, Va.; Sterling Plant (explosives) (Du Pont), East Birmingham, Ala.
 - Southern Railway: Belleville Plant (Du Pont), Belleville, Ill.; Chattanooga Plant (Du Pont), Ooltewah, Tenn.; Jefferson Powder Company, Sayreton, Ala.; Rand Powder Company, Dossetts Station, Tenn.; Sterling Plant (Du Pont), Lewisburg, Ala.; Tennessee Powder Company, Jellico, Tenn.
 - Southern Indiana Railway: United States Powder Company, Coalmont, Ind.
 - Southern Pacific Company: Benicia Arsenal, Benicia, Cal.; California Cap Company, Stege, Cal.; Coast Manufacturing and Supply Company, Melrose, Cal.; Giant Powder Company (consolidated), Clipper Gap, Cal.; Giant Powder Company (consolidated), Giant, Cal.; Hercules Plant (Du Pont), Hercules, Cal.; Pacific High Explosive Company, Roberts Station, Cal.; Santa Cruz Plant (Du Pont), Santa Cruz, Cal.; Selby Shell Works, Selby, Cal.; Texas Dynamite Company, Beaumont, Tex.; United Powder Company, San Jose, Cal.; Vigorite Plant (Du Pont), Vigorite, Cal.
 - * Staten Island Rapid Transit Railway Company: Consolidated Fireworks Company, Port Richmond, N. Y.; Nordlinger-Charlton Fireworks Company, Port Richmond, N. Y.; Thomas Lloyd (fireworks), Dongan Hills, N. Y.
 - Sunset Central Lines.
 - Tacoma Eastern Railway.
 - Terminal Railroad Association of St. Louis.
 - * Toledo and Western Railroad: Great Western Powder Company, Toledo, Ohio.
 - * Toledo, St. Louis and Western Railroad: Great Western Powder Company, Toledo, Ohio.
 - Toronto, Hamilton and Buffalo Railway: Hand Fireworks Company, Hamilton, Ontario.
 - Trinity and Brazos Valley Railway.
 - Union Pacific Railroad.
 - Vandalia Railroad: Del Grande Fireworks Company, Paris, Ill.; Majestic Powder Company, Greenup, Ill.
 - Virginian Railway.
 - Wabash Railroad: Aetna Powder Company, Aetna, Ind.; Great Western Powder Company, Toledo, Ohio.
 - * Western Maryland Railroad: Rockdale Powder Company, Hoffmanville, Md.
 - Western Railway of Alabama.
 - * Wharton and Northern Railroad: General Explosives Company, Lake Junction, N. J.; Picatinny Arsenal, Piccatinny, N. J.
 - Wheeling and Lake Erie Railroad: Austin Cartridge Company, Falls Junction, Ohio; Austin Powder Company, Falls Junction, Ohio; Great Western Powder Company, Toledo, Ohio.
- Total number explosive manufactories, 147; total number fireworks manufactories, 17; total, 164.

Partial list of distributing magazines.

[Compiled by chief inspector, Bureau of Explosives, January 1, 1908. *Lines not Members of the Bureau of Explosives.]

- Alabama Great Southern Railroad: Birmingham, Ala.; Chattanooga, Tenn.; Tuscaloosa, Ala.
- *Albany and Hudson Railroad: Hudson, N. Y.
- Atchison, Topeka and Santa Fe Railway (coast lines): Albuquerque, N. Mex.; Bakersfield, Cal.; Fresno, Cal. (2); Los Angeles, Cal.; Mojave, Cal.

Atchison, Topeka and Santa Fe Railway: Atchison, Kans. (3); Albuquerque, N. Mex. (2); Canon City, Colo.; Colorado Springs, Colo.; Deming, N. Mex.; El Paso, Tex. (3); Emporia, Kans.; Fierro, N. Mex.; Galesburg, Ill.; Guthrie, Okla.; Joliet, Ill.; Las Vegas, N. Mex.; Leeds, Mo.; Oklahoma City, Okla. (3); Pittsburg, Kans.; Pueblo, Colo. (2); Raton, N. Mex. (2); Romeo, Ill.; St. Joseph, Mo. (2); Salina, Kans.; Santa Fe, N. Mex.; Silver City, N. Mex.; Streator, Ill.; Topeka, Kans. (2); Trinidad, Colo.; Wichita, Kans.

*Atlanta, Birmingham and Atlantic Railroad: Bristol, Tenn.

Atlantic Coast Line Railroad: Charleston, S. C.; Columbia, S. C.; Gainesville, Fla.; Jacksonville, Fla.; Ocala, Fla.; Petersburg, Va.; Richmond, Va.; Spartanburg, S. C.; Washington, N. C.

*Asheville and Craggy Mountain Railway: Asheville, N. C.

Bangor and Aroostook Railroad: Bangor, Me. (2); Houlton, Me.

*Bangor and Portland Railroad: Bangor, Pa.

*Baltimore and Ohio Railroad: Baltimore, Md.; Bremen, Md.; Cambridge, Ohio; Clarksburg, W. Va.; Cleveland, Ohio; Columbus, Ohio (2); Connellsville, Pa.; Cumberland, Md.; Evans Station, Pa.; Fostoria, Ohio; Hagerstown, Md.; Harrisonburg, Va.; Highland, W. Va.; Huntington, W. Va. (2); Johnstown, Pa. (4); Kenova, W. Va.; Monongah, W. Va.; Newburg, Ohio; New Castle, Pa.; Piedmont, W. Va.; Rand, Pa. (4); Sandusky, Ohio; Sharpsburg, Pa. (4); Somerset, Pa.; Staunton, Va. (2); Uniontown, Pa.; Wheeling, W. Va. (2); Youngstown, Ohio; Zanesville, Ohio.

*Baltimore and Ohio Southwestern Railroad: Cincinnati, Ohio (3); Columbus, Ohio; Eifort, Ohio; Louisville, Ky. (2); Newport, Ky.; North Vernon, Ind.; Portsmouth, Ohio; Springfield, Ill.; Vincennes, Ind.; Washington, Ind.

Bessemer and Lake Erie Railroad: Greenville, Pa.; Grove City, Pa. (2); Hilliard, Pa.; Kaylor Station, Pa.

*Blue Ridge Railway: Anderson, S. C.

*Boston and Albany Railroad: Boston, Mass.; Hudson, N. Y.; Worcester, Mass.

Boston and Maine Railroad: Boston Harbor, Mass.; Croydon, N. H.; Lancaster, N. H.; Mechanicsville, N. Y.; Nashua, N. H.; Newhall, Me.; Newport, Vt.; Salem, Mass.; Schaghticoke, N. Y.; Sherbrooke, Quebec; South Windham, Me.; Swanton, Vt. (2); West Roxbury, Mass.; Worcester, Mass. (3).

*Buffalo and Susquehanna Railway: Dubois, Pa. (2).

Buffalo, Rochester and Pittsburgh Railway: Bradford, Pa.; Buffalo, N. Y. (9); Clearfield, Pa.; Dubois, Pa. (2); Indiana, Pa.; New Castle, Pa.; Punxsutawney, Pa. (2); Rand, Pa. (4); Rochester, N. Y.; Sharpsburg, Pa. (4).

*Butte, Anaconda and Pacific Railway: Butte, Mont.; Dawson, Mont.

*Canadian Pacific Railway: Burlington, Ontario; Calgary, Alberta; Cody (Sandon), British Columbia; Cranbrook, British Columbia; Greenwood, British Columbia; Hull, Quebec; Isle Perrot, Quebec (2); London, Ontario (2); Nanaimo, British Columbia; Nelson, British Columbia; Northfield, British Columbia; Penticton, British Columbia; Rat Portage (Kenova), Ontario; Roseland, British Columbia; Sault Ste. Marie, Ontario; Silvertown, British Columbia; Sudbury, Ontario; Vancouver, British Columbia; Victoria, British Columbia; Wabigoon, Ontario; Waterdown, Ontario; Winnipeg, Manitoba; York, Ontario.

*Central Indiana Railway: Brazil, Ind.

*Central New England Railway: Canaan, Conn.; Poughkeepsie, N. Y.

Central of Georgia Railway: Athens, Ga.; Birmingham, Ala. (7); Chattanooga, Tenn. (5); Rome, Ga. (3); Sterling, Ala. (2).

Central Railroad of New Jersey: Ashley, Pa. (2); Catasauqua, Pa.; Easton, Pa. (2); Jersey City, N. J. (boat); Mauch Chunk, Pa.; Northampton, Pa.; Penobscot, Pa.; Slatington, Pa.; South Wilkesbarre, Pa.; Tamaqua, Pa.; Wilkesbarre, Pa.

Central Vermont Railway: Burlington, Vt.; New London, Conn.; Norwich, Conn.

*Chattanooga Southern Railroad: Chattanooga, Tenn. (5).

Chesapeake and Ohio Railway: Ashland, Ky.; Beckley, W. Va.; Catlettsburg, Ky. (2); Charleston, W. Va.; Charlottesville, Va.; Cincinnati, Ohio (3); Clifton Forge, Va.; Huntington, W. Va. (2); Ironton, Ohio (2); Kenova, W. Va.; Lexington, Ky.; Lynchburg, Va.; Louisville, Ky. (2); Maysville, Ky.; Mount Sterling, Ky.; Morehead, Ky.; Newport, Ky.; Portsmouth, Ohio; Richmond, Va.; Staunton, Va.; Winchester, Ky.

*Chesapeake Western Railway: Harrisonburg, Va.

*Chicago and Alton Railroad: Independence, Mo.; Joliet, Ill.; Leeds, Mo.; Springfield, Ill.; Streator, Ill.; Summit, Ill.

Chicago and Eastern Illinois Railroad: Brazil, Ind.; Danville, Ill.; East St. Louis, Ill. (3); Terre Haute, Ind.

Chicago and Northwestern Railway: Antigo, Wis. (3); Ashland, Wis.; Cedar Rapids, Iowa; Chippewa Falls, Wis.; Clinton, Iowa; Clintonville, Wis.; Commonwealth, Wis.; Crystal Falls, Mich. (2); Cuba City, Ind. (2); Cumberland, Wis.; Deadwood,

S. Dak.; Des Moines, Iowa (3); Douglas, Wyo.; Duluth, Minn.; Florence, Nebr. (4); Fond du Lac, Wis. (2); Galena, Ill.; Grand Rapids, Wis. (2); Green Bay, Wis. (2); Hurley, Wis.; Iron Mountain, Mich. (2); Iron River, Mich.; Ironwood, Mich.; Ishpeming, Mich. (3); Ives, Wis.; Laona, Wis.; Lead City, S. Dak.; Manitowoc, Wis. (2); Mankato, Minn.; Marshalltown, Iowa; Marshfield, Wis.; Milwaukee, Wis. (3); Omaha, Nebr.; Peoria, Ill.; Platteville, Wis.; Pleasant Prairie, Wis. (3); Portland, S. Dak.; Rapid City, S. Dak.; Rhinelander, Wis.; Rice Lake, Wis.; Saylor, Iowa; Sioux City, Iowa; Stambaugh, Mich. (2); Stratford, Wis.; Wakefield, Mich.; Washburn, Wis.; Wausau, Wis.

Chicago, Burlington and Quincy Railroad: Ashburn, Mo. (4); Atchison, Kans.; Aurora, Ill.; Billings, Mont.; Burlington, Iowa; Canton, Ill.; Clinton, Iowa; Custer, S. Dak.; Deadwood, S. Dak.; Derby, Colo.; Des Moines, Iowa (3); East Alton, Ill.; East St. Louis, Ill. (3); Edwards, Ill.; Erie, Colo.; Florence, Nebr. (4); Galena, Ill.; Galesburg, Ill.; Hill City, S. Dak.; Keystone, S. Dak.; La Motte, Mo.; Lead City, S. Dak.; Leeds, Mo.; Mid Oaks, Minn. (4); Moline, Ill.; Mocar, Iowa; Omaha, Nebr.; Ottumwa, Iowa (2); Peoria, Ill.; Pluma, S. Dak.; Portland, S. Dak.; St. Joseph, Mo. (2); Sioux City, Iowa; Spearfish, S. Dak.; Streator, Ill.

*Chicago Great Western Railway: Des Moines, Iowa (3); Duquque, Iowa; Florence, Nebr. (4); Mankato, Wis.; Mid Oaks, Minn. (4); Omaha, Nebr.; St. Joseph, Mo. (2).

*Chicago, Indiana and Southern Railroad: Danville, Ill.; Streator, Ill.

Chicago, Indianapolis and Louisville Railway: Bloomington, Ind.; Crawfordsville, Ind.; Indianapolis, Ind. (2); Linton, Ind.; Louisville, Ky. (2).

*Chicago Milwaukee and St. Paul Railway: Cedar Rapids Iowa; Chippewa Falls, Wis.; Clinton, Iowa; Crystal Falls Mich. (2); Dell Rapids S. Dak.; Des Moines Iowa (3); Dubuque, Iowa; Florence, Nebr. (4); Fond du Lac Wis. (2); Green Bay, Wis. (2); Iron Mountain Mich. (2); Lannon, Wis.; Leeds Mo.; Manitowoc Wis.; Mankato, Minn.; Merrill Wis.; Mid Oaks Minn. (4); Milwaukee Wis. (3); Mineral Point, Wis.; Moline Ill.; Mosinee Wis.; Omaha Nebr.; Ontonagon Mich.; Ottumwa Iowa (2); Pittsville, Wis.; Platteville, Wis. (2); Pleasant Prairie, Wis. (3); Shullsburg, Wis.; Wausau, Wis.

Chicago, Rock Island and Gulf Railway: Bridgeport, Tex.; Dallas, Tex.; Fort Worth, Tex. (2).

Chicago, Rock Island and Pacific Railway: Atchison, Kans.; Burlington, Iowa; Cedar Rapids Iowa; Clinton, Iowa (2); Colorado Springs Colo.; Derby, Colo.; Des Moines, Iowa (3); El Reno Okla.; Florence, Nebr. (4); Fort Smith Ark.; Guthrie, Okla.; Hartshorne, Okla.; Hughes Okla.; Independence, Mo.; Joliet, Ill.; Kansas City, Mo.; Laddsdale, Iowa; Leavenworth Kans.; Leeds Mo.; Little Rock Ark.; Memphis Tenn.; Mid Oaks, Minn. (4); Moline Ill.; Oklahoma City, Okla.; Omaha, Nebr.; Ottumwa, Iowa (2); Pueblo, Colo. (2); St. Joseph, Mo. (2); Topeka, Kans.; Waterloo, Iowa; Wichita, Kans.

*Chicago, Peoria and St. Louis Railway: Springfield, Ill.

Chicago, St. Paul, Minneapolis and Omaha Railway: Barksdale, Wis.; Chippewa Falls, Wis. (2); Duluth, Minn.; Florence, Nebr. (4); Iron Mountain, Mich. (2); Marshfield, Wis.; Mid Oaks, Minn. (4); Rice Lake, Wis.; St. Paul, Minn.; Superior, Wis.; Sioux City, Iowa; Washburn, Wis.

*Cincinnati, Hamilton and Dayton Railway: Cincinnati, Ohio; Decatur, Ill.; Delphos, Ohio; Fort Wayne, Ind.; Indianapolis, Ind. (2); Linia, Ohio; Newport, Ky.; Xenia, Ohio.

Cincinnati, New Orleans and Texas Pacific Railway: Chattanooga, Tenn. (5); Cincinnati, Ohio (3); Newport, Ky.

Cincinnati Northern Railroad: Greenville, Ohio; Newport, Ky.

Cleveland, Akron and Columbus Railway: Akron, Ohio; Columbus, Ohio (2); Zanesville, Ohio.

Cleveland, Cincinnati, Chicago and St. Louis Railway (Big "4"): Cincinnati, Ohio (3); Columbus, Ohio (2); Crawfordsville, Ind.; Danville, Ill.; East Alton, Ill.; East St. Louis, Ill. (3); Farmland, Ind.; Fontanet, Ind.; Indianapolis, Ind. (2); Louisville, Ky.; Mount Carmel, Ill.; Newport, Ky.; North Vernon, Ind.; Peoria, Ill.; Sandusky, Ohio; Springfield, Ohio; Terre Haute, Ind.; Vincennes, Ind.

Coal and Coke Railway: Belington, W. Va.; Charleston, W. Va. (5).

*Cœur d'Alene and Spokane Railway: Spokane, Wash.

*Colorado and Northwestern Railroad: Boulder, Colo.

*Colorado and Southern Lines: Boulder, Colo.; Colorado Springs, Colo.; Derby, Colo. (2); Gunnison, Colo.; Leadville, Colo.; Pueblo, Colo. (2); Trinidad, Colo.

*Colorado and Wyoming Railway: Trinidad, Colo.

*Colorado Midland Railway: Colorado Springs, Colo.; Grand Junction, Colo.; Leadville, Colo.

- *Colorado Springs and Cripple Creek District Railway: Colorado Springs, Colo.
- *Columbia and Puget Sound Railroad: Black River Junction, Wash.
- *Copper Range Railroad: Hancock, Mich.
- *Cumberland and Pennsylvania Railroad: Cumberland, Md.; Piedmont, W. Va.
- Cumberland Valley Railroad: Carlisle, Pa.; Chambersburg, Pa.; Hagerstown, Md.; Mechanicsburg, Pa.; Waynesboro, Pa.
- *Danville and Western Railway: Danville, Va.
- *Davenport, Rock Island and Northwestern Railway: Moline, Ill.
- *Dayton and Union Railroad: Greenville, Ohio.
- Delaware and Hudson Company: Albany, N. Y.; Crown Point, N. Y.; Fair Haven, Vt.; Fort Ann, N. Y.; Fort Edward, N. Y.; Glens Falls, N. Y.; Jermyn, Pa.; Moosic, Pa.; Peckville, Pa.; Plattsburg, N. Y.; Port Henry, N. Y.; Poultney, Vt.; Rutland, Vt.; Saranac Lake, N. Y.; Schenectady, N. Y.; Ticonderoga, N. Y.; Wilkesbarre, Pa.
- *Delaware, Lackawanna and Western Railroad: Buffalo, N. Y. (9); Catawissa, Pa.; Easton, Pa. (2); Elmira, N. Y.; Paterson, N. J.; Peckville, Pa.; Pittston, Pa.; Plymouth, Pa.; Syracuse, N. Y. (3).
- *Delaware Valley Railroad: Stroudsburg, Pa.
- *Denver and Rio Grande Railroad: Canon City, Colo.; Colorado Springs, Colo.; Derby, Colo.; Durango, Colo.; Grand Junction, Colo.; Gunnison, Colo.; Leadville, Colo.; Pueblo, Colo. (2); Santa Fe, N. Mex.; Silverton, Colo.; Trinidad, Colo.
- *Des Moines, Iowa Falls and Northern Railway: Des Moines, Iowa (3).
- Detroit and Mackinac Railway: Cheboygan, Mich.
- *Detroit and Toledo Shore Line Railroad: Monroe, Mich.
- *Detroit, Toledo and Ironton Railway: Ironton, Ohio (2); Lima, Ohio; Springfield, Ohio.
- *Duluth and Iron Range Railroad: Biwabik, Minn.; Duluth, Minn.; Ely, Minn.; Eveleth, Minn.; Tower, Minn.; Two Harbors, Minn.; Virginia, Minn.
- *Duluth, Missabe and Northern Railway: Biwabik, Minn.; Coleraine, Minn.; Duluth, Minn.; Hibbing, Minn.; Virginia, Minn.
- *Duluth, Rainy Lake and Winnipeg Railway: Virginia, Minn.
- *Duluth, South Shore and Atlantic Railway: Duluth, Minn.; Houghton, Mich.; Ishpeming, Mich. (3.); Superior, Wis.
- *East Tennessee and Western North Carolina Railroad: Johnson City, Tenn.
- Eastern Railway of New Mexico: Carlsbad, N. Mex.
- *Elgin, Joliet and Eastern Railway: Joliet, Ill.
- El Paso and Southwestern System: Bisbee, Ariz.; Douglas, Ariz.; El Paso, Tex.; Tombstone, Ariz.
- Erie Railroad: Akron, Ohio; Blossburg, Pa.; Bradford, Pa.; Buffalo, N. Y. (9); Cleveland, Ohio; Corry, Pa.; Elmira, N. Y.; Greenville, Pa.; Lima, Ohio; Lockport, N. Y.; Moosic (Nay-Aug.), Pa.; Newburg, Ohio; New Castle, Pa.; Paterson, N. J.; Port Jervis, N. Y.; Rochester, N. Y.; Stroudsburg, Pa.; West Newburg, N. Y.; Wilkes-Barre, Pa.; Youngstown, Ohio.
- Evansville and Indianapolis Railroad: Brazil, Ind.; Evansville, Ind. (2); Indianapolis, Ind.; Terre Haute, Ind.; Washington, Ind.
- Evansville and Terre Haute Railroad: Evansville, Ind. (2); Terre Haute, Ind.; Vincennes, Ind.
- *Evansville, Suburban and Newburgh Railway: Evansville, Ind. (2).
- *Florence and Cripple Creek Railroad: Canon City, Colo.
- *Florida East Coast Railway: Jacksonville, Fla.; Miami, Fla.
- *Fort Smith and Western Railroad: El Reno, Ark.; Fenn, Ark.; Fort Smith, Ark.; Guthrie, Okla.
- *Fort Worth and Denver City Railway: Fort Worth, Tex.
- *Gainesville Midland Railway: Athens, Ga.
- *Galveston, Houston and Henderson Railroad: Houston, Tex.
- *George's Creek and Cumberland Railroad: Cumberland, Md.
- *Georgetown and Western Railroad: Georgetown, S. C.
- *Georgia Railroad: Athens, Ga.; Atlanta, Ga.
- *Georgia Southern and Florida Railway: Jacksonville, Fla.
- *Glenn Springs Railroad: Spartanburg, S. C.
- Grand Rapids and Indiana Railway: Fort Wayne, Ind.; Grand Rapids, Mich.; Petoskey, Mich.; Traverse City, Mich.
- Grand Trunk Railway System: Belœil, Quebec; Buffalo, N. Y.; Buckingham, Quebec; Burlington, Ontario; Coti St. Luc, Quebec; Grand Rapids, Mich.; Hamilton, Ontario; Hagersville, Ontario (2); Hull, Quebec; Isle Perrot, Quebec; Kawkawlin, Mich.; Lachine, Quebec; London, Ontario; Milwaukee, Wis. (2); Saginaw, Wis. (2); Swanton, Vt. (2); Toronto, Ontario; Waterdown, Ontario; Windsor Mills, Quebec; York, Ontario.

*Great Northern Railway Line: Bellingham, Wash.; Butte, Mont.; Duluth, Minn.; Great Falls, Mont.; Helena, Mont.; Hibbing, Minn.; Leeds, Iowa; Mid Oaks, Minn. (4); Nashwauk, Minn.; Neihart, Mont.; Sioux City, Iowa; Spokane, Wash.; Virginia, Minn.

*Green Bay and Western Railroad: Coyne, Wis.; Green Bay, Wis. (2); Stevens Point, Wis.

Gulf, Colorado and Santa Fe Railway: Beaumont, Tex.; Dallas, Tex.; Fort Worth, Tex.; Houston, Tex.; Paris, Tex.; Sherman, Tex.

Hocking Valley Railway: Charleston, W. Va.; Columbus, Ohio; Fostoria, Ohio; Gallipolis, Ohio.

Houston and Texas Central Railroad: Austin, Tex.; Dallas, Tex.; Fort Worth, Tex.; Houston, Tex.

Houston and Shreveport Railroad: Shreveport, La.

Houston, East and West Texas Railway: Houston, Tex.; Nacogdoches, Tex.

*Huntingdon and Broad Top Mountain Railroad: Everett, Pa.

Illinois Central Railroad: Cedar Rapids, Iowa; Church, Ill.; Decatur, Ill.; East St. Louis, Ill. (3); Evansville, Ind. (2); Florence, Nebr. (4); Fort Dodge, Iowa; Galena, Ill.; Hampton Switch, Tenn. (2); Jackson, Miss.; Leeds, Iowa; Louisville, Ky. (2); Memphis, Tenn.; Nashville, Tenn.; New Orleans, La. (2); Omaha, Nebr.; Owensboro, Ky. (2); Peoria, Ill.; Sioux City, Iowa; Springfield, Ill.; Vicksburg, Miss.; West Belleville, Ill.; Yazoo City, Miss.

*Illinois, Iowa and Minnesota Railway: Joliet, Ill.

*Indiana, Columbus and Eastern Traction Company: Lima, Ohio.

Indianapolis Southern Railroad (Illinois Central Railroad): Bloomington, Ind.; Indianapolis, Ind. (2); Lenton, Ind.

*International and Great Northern Railroad: Austin, Tex.; Fort Worth, Tex.; Houston, Tex.; Tyler, Tex.

*Kansas City, Clinton and Springfield Railway: Clinton, Mo.; Deepwater, Mo.; Springfield, Mo.

*Kansas City, Mexico and Orient Railway: Wichita, Kans.

*Kansas City Southern Railway: Fenn, Ark.; Fort Smith, Ark.; Independence, Mo.; Joplin, Mo. (3); Leeds, Mo.; Pittsburg, Kans.; Shreveport, La.; Texarkana, Tex.; Westville, Okla.

*Kewaunee, Green Bay and Western Railroad: Green Bay, Wis. (2).

*Lackawanna and Wyoming Valley Railroad: Moosic, Pa.; Wilkes-Barre, Pa.

*Lake Champlain and Moriah Railroad: Port Henry, N. Y.

Lake Erie and Western Railroad: Bloomington, Ill.; East Peoria, Ill.; Fostoria, Ohio; Hartford City, Ind.; Indianapolis, Ind. (2); Lima, Ohio; Peoria, Ill.; Sandusky, Ohio.

Lake Shore and Michigan Southern Railway: Brookfield, Ohio; Buffalo, N. Y.; Cleveland, Ohio; Eagle Mills, Mich.; Erie, Pa.; Fort Wayne, Ind.; Grand Rapids, Mich.; Joliet, Ill.; Monroe, Mich.; Sandusky, Ohio; Sharon, Pa.; Warner, Mich.; Youngstown, Ohio.

*Lake Superior and Ishpeming Railway: Ishpeming, Mich.

*Lancaster, Oxford and Southern Railroad: Lancaster, Pa.

*Leavenworth and Topeka Railway: Topeka, Kans.

*Lehigh and Hudson River Railroad: Easton, Pa.

Lehigh Valley Railroad: Ashland, Pa.; Bangor, Pa.; Buffalo, N. Y. (9); Catasauqua, Pa.; Dallas, Pa.; Easton, Pa. (2); Exeter, Pa.; Hazleton, Pa.; Jeddo, Pa.; Mahanoy City, Pa.; Pottsville, Pa.; Rochester, N. Y.; Slatington, Pa.; South Wilkes-Barre, Pa.; Tomhicken, Pa.; Tonawanda (Township), N. Y.; Wilkes-Barre, Pa.

Lehigh and New England Railroad: Slatington, Pa.

*Lexington and Eastern Railway: Lexington, Ky.; Winchester, Ky.

*Little Falls and Dolgeville Railway: Little Falls, N. Y.

*Louisiana Railway and Navigation Company: New Orleans, La. (2).

Louisville and Nashville Railroad: Anniston, Ala. (2); Big Stone Gap, Va.; Birmingham, Ala.; Cincinnati, Ohio (3); Evansville, Ind. (2); Jellico, Tenn. (8); Knoxville, Tenn. (8); Lexington, Ky.; Louisville, Ky. (2); Madisonville, Ky.; Maysville, Ky.; Memphis, Tenn. (2); Mobile, Ala.; Nashville, Tenn.; New Orleans, La. (2); Newport, Ky.; Owensboro, Ky.; Winchester, Ky.

Louisville, Henderson and St. Louis Railway: Evansville, Ind. (2); Louisville, Ky.; Owensboro, Ky.

*Maine Central Railroad: Bangor, Me. (2); Bath, Me.; Newhall, Me.; Rockland, Me.

*Manistee and Northeastern Railroad: Traverse City, Mich.

*Marquette and Southeastern Railway: Superior, Wis.

*Maryland, Delaware and Virginia Railway: Baltimore, Md.

*Maryland and Pennsylvania Railroad: York, Pa.

- * Mary Lee Railroad: Lewisburg, Ala.
- Michigan Central Railroad: Buffalo, N. Y.; Grand Rapids, Mich.; Hagersville, Ontario (2); London, Ontario (2); Milwaukee, Wis.; Monroe, Mich.; Saginaw, Mich. (2).
- * Mineral Point and Northern Railway: Mineral Point, Wis.
- * Mineral Range Railroad: Hancock, Mich.; Houghton, Mich.; Swedestown, Mich.
- * Minneapolis and St. Louis Railroad: Des Moines, Iowa (3); Mid Oaks, Minn. (4).
- * Minneapolis, St. Paul and Sault Ste. Marie Railway: Duluth, Minn.; Mid Oaks, Minn. (4); Rice Lake, Wis. (3).
- Missouri, Kansas and Texas Railway: Austin, Tex.; Chitwood, Mo.; Clinton, Mo.; Columbus, Kans.; Dallas, Tex.; Eagle Ford, Tex.; East St. Louis, Ill. (3); East Waco, Tex.; Emporia, Kans.; Fort Scott, Kans.; Fort Worth, Tex.; Galena, Kans. (2); Guthrie, Okla.; Houston, Tex.; Joplin, Mo.; Leeds, Mo.; Oklahoma, Okla.; Oklahoma City, Okla. (3); Patterson, Okla.; San Antonio, Tex.; Sedalia, Mo.; Sherman, Tex.; Shreveport, La.; Turk, Kans.; Wilburton, Okla.
- Missouri Pacific Railway: Atchison, Kans.; Aurora, Mo. (3); East St. Louis, Ill. (3); Eureka, Mo.; Florence, Nebr. (4); Fort Scott, Kans.; Fort Smith, Ark.; Granby, Mo.; Independence, Mo.; Joplin, Mo. (3); Kansas City, Mo.; Leeds, Mo.; Little Rock, Ark.; Memphis, Tenn.; Natchez, Miss.; Omaha, Nebr.; Pacific, Mo.; Pine Bluff, Ark.; Pittsburg, Kans.; Pueblo, Colo. (2); St. Joseph, Mo. (2); Sedalia, Mo.; Springfield, Mo.; Topeka, Kans.; Valley Park, Mo.; Webb City, Mo. (3); Wichita, Kans.
- * Missouri River and Northwestern Railway: Rapid City, S. Dak.
- * Mobile and Ohio Railroad: Mobile, Ala.; Tuscaloosa, Ala.
- * Mobile and Western Railroad: Mobile, Ala.
- * Mobile, Jackson and Kansas City Railroad: Mobile, Ala.
- * Monson Railroad: Monson, Me.
- * Nashville, Chattanooga and St. Louis Railway: Atlanta, Ga.; Chattanooga, Tenn. (5); Memphis, Tenn.; Nashville, Tenn.; Rome, Ga. (3).
- New Orleans and Northeastern Railroad: New Orleans, La. (2); Shreveport, La.; Vicksburg, Miss. (2).
- * New Orleans, Fort Jackson and Grand Isle Railroad: New Orleans, La. (2).
- * New Orleans Great Northern Railroad: New Orleans, La. (2).
- * New Orleans Terminal Company: New Orleans, La. (2).
- * New York and Pittsburg Air Line Railroad: Houtsdale, Pa.; Philipsburg, Pa.
- New York Central and Hudson River Railroad: Albany, N. Y.; Amsterdam, N. Y.; Antwerp, N. Y.; Arcadia, Pa. (4); Bellefonte, Pa.; Bloomington, N. Y.; Booneville, N. Y.; Buffalo, N. Y. (9); Burnside, Pa.; Canton, N. Y.; Carthage, N. Y.; Catskill, N. Y.; Clearfield, Pa.; Esopus, N. Y.; Fort Plain, N. Y. (2); Gouverneur, N. Y.; Hudson, N. Y.; Kingston, N. Y.; Little Falls, N. Y.; Lock Haven, Pa.; Lockport, N. Y.; Madera, Pa.; Mahaffey, Pa.; Morrisdale, Mines, Pa.; Malone Junction, N. Y.; New York Harbor, New York; Ogdensburg, N. Y.; Ossining, N. Y.; Philipsburg, Pa.; Poughkeepsie, N. Y.; Rochester, N. Y.; Rosendale, N. Y.; St. Benedict, Pa.; Saranac Lake, N. Y.; Schenectady, N. Y.; Shanktown, Pa.; Snow Shoe, Pa.; Syracuse, N. Y.; Talcville, N. Y.; Tonawanda Township, N. Y.; Wallacetown, Pa.; Watertown, N. Y.; Wellsboro, Pa.; West Newburgh, N. Y.; White Plains, N. Y.; Whiteport, N. Y.
- * New York, Chicago and St. Louis Railroad (Nickel Plate): Buffalo, N. Y.; Erie, Pa.; Fort Wayne, Ind.; Fostoria, Ohio.
- * New York, New Haven and Hartford Railroad: Boston, Mass.; Bridgeport, Conn.; Canaan, Conn.; New Britain, Conn.; New London, Conn.; New York Harbor, N. Y.; Norwich, Conn.; Poughkeepsie, N. Y.; Quincy, Mass.; Waterbury, Conn.; West Torrington, Conn.; Worcester, Mass.
- New York, Ontario and Western Railway: Jermyn, Pa.; Peckville, Pa.; Port Jervis, N. Y.
- Norfolk and Southern Railroad: Elizabeth City, N. C.; Washington, N. C.
- Norfolk and Western Railway: Ardway, Va.; Ashland, Ky.; Bedford, Va.; Bluefield, W. Va.; Bristol, Tenn. (2); Cincinnati, Ohio (3); Columbus, Ohio (2); Gary, W. Va.; Glen Lyn, Va.; Hagerstown, Md.; Ironton, Ohio (2); Ivanhoe, Va.; Lynchburg, Va. (2); Newport, Ky.; Norton, Va.; Petersburg, Va.; Portsmouth, Ohio; Pulaski, Va.; Roanoke, Va. (4); Salem, Va.; South Boston, Va.; Suffolk, Va.; Welsh, W. Va.; Williamson, W. Va.; Winston-Salem, N. C. (2).
- Northern Ohio Railway: Delphos, Ohio.
- * Northern Pacific Railway: Ashland, Wis.; Atchison, Kans.; Bellingham, Wash.; Billings, Mont.; Black River Junction, Wash.; Butte, Mont.; Deer Lodge, Mont.; Deerwood, Minn.; Duluth, Minn.; Helena, Mont.; Marshall, Wash.; Marysville, Mont.; Mid Oaks, Minn. (4); Missoula, Mont.; Spokane, Wash.; Washburn, Wis.; Wilbur, Wash.
- * Ohio River and Western Railway: Zanesville, Ohio.
- Oregon Railroad and Navigation Company: Pendleton, Oreg.

Oregon Short Line Railroad: Beck's Hot Springs, Utah (2); Boise, Idaho; Butte, Mont.; Hailey, Idaho; Melrose, Mont.; Nampa, Idaho; Salt Lake City, Utah; Virginia City, Mont.

Pennsylvania Lines: Carnegie, Pa. (2); Cincinnati, Ohio (3); Columbus, Ohio (2); Conesville, Ohio; Coshocton, Ohio; Delphos, Ohio; Edinburg, Ind.; Erie, Pa.; Fort Wayne, Ind.; Goes, Ohio; Greenville, Ohio; Greenville, Pa.; Hillsville, Pa.; Houston, Pa.; Indianapolis, Ind. (2); Lima, Ohio; Louisville, Ky. (2); Newburg, Ohio; New Castle, Pa.; Newport, Ky.; North Vernon, Ind.; Oakdale, Pa.; Sandusky, Ohio; Shelbyville, Ind.; Steubenville, Ohio (2); Walkers Mills, Pa.; (2) Wheeling, W. Va. (2); Xenia, Ohio; Zanesville, Ohio.

Pennsylvania Railroad: Bainbridge, Pa.; Baltimore, Md.; Bedford, Pa.; Belle Fonte, Pa.; Braderville, Pa.; Bradford, Pa.; Buffalo, N. Y.; Burnside, Pa.; Catawissa, Pa.; Cedar Hollow, Pa.; Clearfield, Pa.; Coalport, Pa.; Connellsville, Pa.; Corry, Pa.; Cumberland, Md.; Dubois, Pa. (2); Easton, Pa.; Elmira, N. Y.; Erie, Pa.; Evans Station, Pa.; Farrandville, Pa.; Geistown, Pa.; Harrisburg, Pa.; (arsenal) Hazleton, Pa.; Houtsdale, Pa.; Huntingdon, Pa.; Indiana, Pa.; Johnstown, Pa. (4); Kittaning, Pa.; Lancaster, Pa. (2); Lewistown, Pa.; Lock Haven, Pa.; Mahaffey, Pa.; Mahanoy City, Pa.; Mapleton, Pa.; Milbourne Mills, Philadelphia, Pa.; New Castle, Pa.; New Holland, Pa.; New York Harbor, New York; Norristown, Pa. (2); Patton, Pa. (2); Pavonia, N. J. (arsenal); Paxinos, Pa.; Philipsburg, Pa. (3); Pottsville, Pa. (2); Punxsutawney, Pa. (2); Rand, Pa. (4); Reading, Pa. (5); Reynoldsville, Pa. (2); Rochester, N. Y.; Shamokin, Pa.; Sharon Hill, Pa.; Sharpsburg, Pa. (4); Shenandoah, Pa.; Snow Shoe, Pa.; Sonman, Pa.; South Wilkesbarre, Pa.; Spangler, Pa.; Tamaqua, Pa.; Titusville, Pa.; Trenton, N. J.; Uniontown, Pa.; Wheeling, W. Va.; Wilkesbarre, Pa.; York, Pa.; Youngstown, Ohio.

Pere Marquette System: Buffalo, N. Y.; Grand Ledge, Mich.; Gand Rapids, Mich.; London, Ontario (2); Milwaukee, Wis. (2); Monroe, Mich.; Petoskey, Mich.; Saginaw, Mich. (2); Traverse City, Mich.

Philadelphia and Reading Railway: Ashland, Pa.; Carlisle, Pa.; Catawissa, Pa.; Catasauqua, Pa.; Gettysburg, Pa.; Lancaster, Pa. (2); Macungie, Pa.; Mahanoy City, Pa.; Norristown, Pa. (2); Paxinos, Pa.; Pottsville, Pa. (2); Reading, Pa. (5); Shainline, Pa.; Shamokin, Pa.; Shenandoah, Pa.; Slatington, Pa.; Tamaqua, Pa.; Trenton, N. J.; Williamsport, Pa.

Pittsburgh and Lake Erie Railroad: Hillsville, Pa.; New Castle, Pa.; Rand, Pa. (4); Youngstown, Ohio.

*Pittsburg, Westmoreland and Somerset Railroad: Somerset, Pa.

*Richmond, Fredericksburg and Potomac Railroad: Richmond, Va.

*Rio Grande Southern Railroad: Durango, Colo.

*Rio Grande Western Railway: Dalton, Utah; Eureka, Utah; Grand Junction, Colo.; Park City, Utah; Salt Lake City, Utah.

Rutland Railroad: Burlington, Vt.; Malone Junction, N. Y.; Ogdensburg, N. Y.; Old Chatham, N. Y.; Rutland, Vt.; Swanton, Vt. (2); Ticonderoga, N. Y.

St. Joseph and Grand Island Railway: St. Joseph, Mo. (2).

St. Louis and San Francisco Railroad: Aurora, Mo. (3); Beaumont, Tex.; Baxter, Kans. (2); Birmingham, Ala. (7); Canon City, Colo.; Clinton, Mo.; East St. Louis, Ill. (3); Eureka, Mo.; Fenn, Ark.; Fort Scott, Kans.; Fort Smith, Ark.; Fort Worth, Tex.; Galena, Kans. (2); Granby, Mo. (2); Holmes Park, Mo.; Joplin, Mo. (3); Kansas City, Mo.; Leeds, Mo.; Memphis, Tenn.; Oklahoma City, Okla.; Pacific, Mo.; Pittsburg, Kans.; Springfield, Mo.; Sterling, Ala. (2); Turck, Kans.; Valley Park, Mo.; Webb City, Mo. (3); Westville, Okla.; Wichita, Kans.

*St. Louis, El Reno and Western Railway: El Reno, Okla.; Guthrie, Okla.

St. Louis, Iron Mountain and Southern Railway (Missouri Pacific Railway): Aurora, Mo. (3); Fenn, Ark.; Little Rock, Ark.; Memphis, Tenn.; Springfield, Mo.; Texarkana, Tex.

St. Louis Southwestern Railway System: Camden, Ark.; Corsicana, Tex.; Dallas, Tex. (3); East St. Louis, Ill. (3); Fort Worth, Tex.; Little Rock, Ark. (4); Memphis, Tenn.; Pine Bluff, Ark.; Sherman, Tex.; Shreveport, La.; Texarkana, Ark.; Texarkana, Tex.; Tyler, Tex.; Waco, Tex. (5).

*Salt Lake and Los Angeles Railway: Salt Lake City, Utah.

*Salt Lake and Ogden Railway: Salt Lake City, Utah.

San Antonio and Aransas Pass Railway: Houston, Tex.; San Antonio, Tex.

*San Pedro, Los Angeles and Salt Lake Railroad: Eureka, Utah; Los Angeles, Cal.; Milford, Utah; Salt Lake City, Utah.

*Santa Fe Central Railway: Santa Fe, N. Mex.

*Santa Fe, Prescott and Phoenix Railway: Phoenix, Ariz.

Seaboard Air Line Railway: Athens, Ga.; Atlanta, Ga.; Birmingham, Ala. (7); Charleston, S. C.; Charlotte, N. C.; Chester, S. C.; Gainesville, Fla.; Jacksonville,

Fla.; Monroe, N. C.; Ocala, Fla.; Petersburg, Va.; Richmond, Va.; Sterling, Ala. (2); Wilmington, N. C.

*Silverton Railway: Silverton, Colo.

*Silverton Northern Railroad: Silverton, Colo.

*South and Western Railroad: Johnson City, Tenn.

Southern Indiana Railway: Linton, Ind.; Terre Haute, Ind.

Southern Pacific Lines: Auburn, Cal. (2); Bakersfield, Cal.; Battle Mountain, Nev. (2); Colton, Cal.; Deming, N. Mex.; El Dorado, Cal.; Elko, Nev. (2); Fresno, Cal.; Golconda, Nev.; Grants Pass, Oreg.; Haskell, Oreg.; Houston, Tex.; Lordsburg, Ariz.; Los Angeles, Cal.; Mojave, Cal.; Patagonia, Ariz.; Reno, Nev. (3); San Bernardino, Cal.; San Antonio, Tex.; Tucson, Ariz.; Valley Spring, Cal. (3); Winnemucca, Nev.; Yuma, Ariz.

Southern Railway: Anderson, S. C.; Anniston, Ala. (2); Asheville, N. C. (2); Athens, Ga.; Atlanta, Ga.; Augusta, Ga.; Birmingham, Ala. (7); Boyles, Ala.; Bristol, Tenn. (2); Charleston, S. C.; Charlottesville, Va.; Charlotte, N. C.; Chattanooga, Tenn. (2); Concord, N. C.; Danville, Va.; East St. Louis, Ill. (3); Evansville, Ind. (2); Gadsden, Ala.; Gastonia, N. C.; Goldhill, N. C.; Greensboro, N. C.; Greenville, S. C. (3); Harrisonburg, Va.; Jacksonville, Fla.; Jellico, Tenn.; Johnson City, Tenn.; Knoxville, Tenn. (8); Lewisburg, Ala.; Lexington, Ky.; Louisville, Ky. (2); Lynchburg, Va. (4); Memphis, Tenn.; Mount Carmel, Ill.; Mobile, Ala.; Marlow, Tenn.; Nashville, Tenn. (2); North Birmingham, Ala.; North Wilkesboro, N. C.; Richmond, Va. (7); Riverside, Tenn. (2); Roanoke, Va.; Rome, Ga. (3); Salisbury, N. C. (2); Sterling, Ala. (2); Sylvia, N. C.; Virgilina, Va.

*Spokane and Inland Railway: Spokane, Wash.

*Spokane Falls and Northern Railway: Spokane, Wash.

*Spokane International Railway: Spokane, Wash.

*Sumpter Valley Railway: Sumpter, Oreg.

*Tampa and Jacksonville Railway: Gainesville, Fla.

Terminal Railroad Association of St. Louis: East St. Louis, Ill. (3).

*Texas and New Orleans Railroad: Dallas, Tex.; Houston, Tex.; Nacogdoches, Tex.

*Texas and Pacific Railway: Dallas, Tex.; Fort Worth, Tex.; New Orleans, La. (2); Shreveport, La.; Texarkana, Tex.

*Toledo, St. Louis and Western Railway: Delphos, Ohio.

*Toledo, Peoria and Western Railway: Burlington, Iowa (2); Canton, Ill.; East Peoria, Ill.; Peoria, Ill.

*Tonopah and Goldfield Railroad: Tonopah, Nev.

Trinity and Brazos Valley Railway: Dallas, Tex.; Fort Worth, Tex.; Houston, Tex.

*Tuscaloosa Belt Railway: Tuscaloosa, Ala.

Union Pacific Railroad: Boulder, Colo.; Council Bluffs, Iowa; Derby, Colo.; Erie, Colo.; Florence, Nebr. (4); Fremont, Nebr.; Leeds, Mo.; Omaha, Nebr.; Park City, Utah (2); Rock Springs, Wyo.; Salina, Kans.; Topeka, Kans. (2).

Vandalia Railroad: Brazil, Ind.; Crawfordsville, Ind.; East St. Louis, Ill. (3); Indianapolis, Ind. (2); Peoria, Ill.; Terre Haute, Ind.; Vincennes, Ind.

*Virginia and Southwestern Railway: Big Stone Gap, Va.

Wabash Railroad: Buffalo, N. Y.; Carnegie, Pa. (2); Danville, Ill.; Dawson, Ill.; Decatur, Ill.; Des Moines, Iowa (3); East St. Louis, Ill. (3); Florence, Nebr. (4); Fort Wayne, Ind.; Omaha, Nebr.; Ottumwa, Iowa (2); Rand, Pa. (4); Sharpsburg, Pa. (4); Springfield, Ill.; Wakarusa, Ind.

*Washburn and Northwestern Railway: Washburn, Wis.

*Western and Atlantic Railroad: Atlanta, Ga.; Chattanooga, Tenn. (5).

*Western Maryland Railroad: Baltimore, Md.; Blaine, W. Va.; Cumberland, Md.; Chambersburg, Pa.; Gettysburg, Pa.; Hagerstown, Md.; Hendricks, W. Va.; Waynesboro, Pa.; Westminster, Md.; York, Pa.

*Western Ohio Railway: Lima, Ohio.

Wheeling and Lake Erie Railroad: Wheeling, W. Va. (2).

*Wilkes-Barre and Hazleton Railway: Ashley, Pa.; Wilkes-Barre, Pa.

Williams Valley Railroad: Tower City, Pa.

*Wilmington Seacoast Railway: Wilmington, N. C.

*Wisconsin Central Railway: Antigo, Wis.; Ashland, Wis.; Chippewa Falls, Wis.; Fond du Lac, Wis. (2); Hurley, Wis.; Ironwood, Wis.; Manitowoc, Wis. (2); Marshfield, Wis.; Mid Oaks, Wis. (4); Milwaukee, Wis. (3); Stevens Point, Wis.; Tomahawk, Wis.

Yazoo and Mississippi Valley Railroad (Illinois Central): Memphis, Tenn.; New Orleans, La. (2).

*Yreka Railroad: Yreka, Cal.

The information at hand, January 1, 1908, shows the number of magazines to be, approximately, 1,200, but until inspection can be made of each magazine the list can not be considered as correct.

Mr. MANN. It is said, Doctor, that there is a powder trust.

Doctor DUDLEY. You can not prove anything on it by me. [Laughter.]

Mr. MANN. Where do you get most of the high explosives and powder that are offered for shipment over the Pennsylvania Railroad?

Doctor DUDLEY. From New Jersey and Pennsylvania. There is a very interesting feature connected with that, namely, that we have raised the question in the interest of the safe transportation of explosives—the question, “Why don’t you distribute your works and make explosives near where they are to be used?” Explosives made in Pennsylvania are taken away down to the City of Mexico, and explosives made in New Jersey are used away out in Denver. We say, “Why not take your explosive factories and establish them near where the product is to be used, and thus remove this menace to safety?”

Mr. MANN. What is the principal manufacturer that deals with your company?

Doctor DUDLEY. I suppose the E. I. du Pont de Nemours Powder Company.

Mr. MANN. What percentage of the whole amount do they offer for shipment?

Doctor DUDLEY. I could not give that to you. I am not up on the technical side.

Mr. BARTLETT. Where are their factories located?

Doctor DUDLEY. They are in New Jersey mostly. The reason why these works are located where they are located is as follows: For every pound of explosive that goes into the factory 5 pounds of raw material go into it. That raw material is glycerin, nitrate of soda, sulphur, and other things. Most of the nitrate of soda comes from Chile, and also sulphuric acid. All those are heavy bodies. The transportation of raw materials to Denver and the manufacture of the product there would be expensive. A large proportion of the glycerin is imported, and the nitrate of soda is imported, and sulphur is imported, so that these heavy raw materials entering into the manufacture of explosives would have to be transported across the country if the manufacture were conducted at the points I have mentioned. It is deemed more economical to concentrate the establishments at points where the freight rates on the raw materials would be diminished.

Mr. MANN. We are not interested in that part of it. I am trying to find out where they are located. What other concern besides the Du Pont concern patronizes the Pennsylvania Railroad?

Doctor DUDLEY. I can not tell you.

Mr. MANN. I thought you said these matters all passed through your hands.

Doctor DUDLEY. Not the commercial side of them.

Mr. MANN. I wanted to know what other railroad touched the Du Pont people. What ones in New Jersey, for example?

Doctor DUDLEY. I can not tell you, except perhaps the Wilmington and Northern, the Philadelphia and Reading, the Central Railroad of New Jersey, and the Pennsylvania Railroad.

I want to say one more thing: Unless you deceive yourselves a little bit, this pamphlet likewise contains a list of about 1,500 magazines in addition to manufactories. It is believed that the number

of magazines in existence is over 1,800, and possibly 2,000. We have not got them all located yet. The bureau for the safe transportation of explosives and other dangerous articles has only been in existence seven months. One magazine may serve as a point of departure for a lot of explosives. The whole data are here in this pamphlet, so far as we have got them at present. The information is not complete yet.

Mr. MANN. In considering these regulations have you consulted any other manufacturers of explosives?

Doctor DUDLEY. Yes, sir; a very large number of them, and I would like to mention for your information a very interesting feature: This is the annual report of the bureau for the safe transportation of explosives and other dangerous articles [indicating].

Mr. MANN. Have you been in consultation in that connection with any of the representatives of the Du Pont Company?

Doctor DUDLEY. Yes, sir; we have been in consultation with them and with others. I will give you the whole thing in a minute. It has been made plain that since the responsibility for any explosions in transit rests entirely upon them, the railroads, through the American Railroad Association, must retain the right to make a final decision on regulations. The members of this conference committee at the present time are Mr. H. M. Barksdale, vice-president E. I. du Pont Company; Mr. F. W. Olin, president Equitable Powder Company; Mr. M. Ballou, president American Powder Mills; Mr. A. G. Fay, president Aetna Powder Company; Mr. C. W. Shaffer, secretary and general manager National Powder Company; Mr. F. L. Masury, Masurite Company; Mr. F. K. Brewster, secretary and treasurer Metallic Cap Manufacturing Company; Mr. W. I. Koller, president Association of Manufacturers of Powder and High Explosives; and Mr. G. W. Traer, president Illinois Coal Operators' Association.

Mr. Traer was before us recently in conference urging that the familiarizing influence of packing and transportation on the user is a means of preventing accidents in mines.

Mr. MANN. So far as I am concerned, I am in sympathy with the movement along the line you are working on; but I have heard it stated that the regulations you are preparing under that bill would practically shut out many of the independent manufacturers of explosives, so called, and prevent the institution of new concerns, and that that is one of the designs behind this bill.

Doctor DUDLEY. I would like to say in answer to that that—

Mr. MANN. I do not think that is your design, or the design of the Pennsylvania Railroad Company, but—

Doctor DUDLEY. No. I would like to say in answer to that that that self-same accusation has been made right in the face of Major Dunn by the independent people: "You are acting only in the interest of the trust, and we know it." That is a perfectly fair accusation to make, and there is no reason in the world why anybody should not make it if they want to. But see what the facts are. At that time, with Major Dunn in his seat two months—

Mr. RYAN. Who is Major Dunn?

Doctor DUDLEY. He is the chief inspector of the bureau of explosives.

Mr. RYAN. What railroad is he employed by?

Doctor DUDLEY. He is the employee of all the railroads that joined the bureau. His record is as follows: He invented dunnite, which is the greatest explosive used in armor-piercing shells. It is the only thing that will penetrate a 10-inch armor plate and burst after it gets through. In speaking of the composition of that he said to me: "I am under the most solemn obligations to the United States Army not to reveal how it is made, and never to let it get into the hands of any other manufacturer." Now he is in the Ordnance Corps of the United States Army. He is one of General Crozier's most trusted and reliable subordinates, and we had a perfect "picnic," as you might say, to get him. We had to go even so far as the President of the United States and the Secretary of War in order to get him. He has been detailed by order of the Secretary of War as a matter of public policy—not given a leave of absence, but detailed, to bring order out of this chaos in regard to the quality and transportation of high explosives.

Mr. MANN. Do you pay him anything in addition to his salary?

Doctor DUDLEY. Yes, sir.

Mr. MANN. By permission of the president?

Doctor DUDLEY. I can not say.

Mr. BARTLETT. It would be a violation of law.

Mr. MANN. How much do you pay him?

Doctor DUDLEY. We pay him \$7,500 a year.

Mr. MANN. In addition to his salary?

Doctor DUDLEY. I do not know what his salary is. We pay him that much.

Mr. ADAMSON. You say the railroads combined and employ him?

Doctor DUDLEY. Yes, sir.

Mr. ADAMSON. That makes a trust out of it. [Laughter.]

Doctor DUDLEY. When you get into the trust question, gentlemen, you are more competent to speak than I am; but I am very glad indeed that you raised the question.

Mr. MANN. I made no accusation.

Mr. BARTLETT. You said Major Dunn made the accusation.

Doctor DUDLEY. No; I said he was accused by the outside manufacturers, the independents, so called.

Mr. BARTLETT. By the people who did not employ him?

Doctor DUDLEY. Yes.

Mr. SHERMAN. He is not employed by any other manufacturers, he is simply employed by the transportation companies.

Doctor DUDLEY. Major Dunn said: "I think we would like to meet that accusation. We have put an embargo on two factories because they have failed to carry out the regulations." As it happened, both those factories belong to what you call the trust.

Mr. SHERMAN. You say to "what is called the trust?"

Doctor DUDLEY. Yes; to what is called the trust. Now, if there is anything anywhere that indicates that the bureau of explosives is not doing the fair, straightforward, and honest thing in a most sincere and earnest effort to bring order out of chaos and to solve this enormous problem of safe transportation of explosives in this country I shall welcome that information.

Mr. MANN. I have no reason to doubt the railroads of the country, and I have no reason to doubt the others; but I asked because, if the so-called powder trust helped to make the regulations, it would not be

difficult to make regulations that would be very onerous to some one else.

Doctor DUDLEY. The powder trust, so called—

Mr. BARTLETT. Is there not a powder trust?

Doctor DUDLEY. Don't ask me. I don't know anything about it. I don't know anything about the organization. I have none of their stock, and have nothing to do with anything but technical matters. I can talk to a finish about the technical side of the question. Of the nine members of the advisory board, one is a member of the trust and the remaining eight are independent.

Mr. ADAMSON. Which is the trust?

Doctor DUDLEY. The so-called trust? [Laughter]. Excuse my slipping on language, but—

Mr. MANN. In your bill you provide that no vessels can be used for the carrying of explosives that are used for carrying passengers. Of course that affects the carriage of explosives on the Great Lakes, where considerable quantities are used. I understand that somebody said yesterday that the Du Pont people had special boats for the carriage of explosives. Would not that give them a monopoly for the carriage of explosives on the Lakes?

Doctor DUDLEY. On commercial matters you will find me pretty lame. I am inclined to go down on one side when you talk commercial matters. I have nothing to do with that side of it. The point I would make is this, however, that the transportation of explosives by water is largely by schooners and smaller vessels.

Mr. DWINNELL. We have never shipped any dynamite or explosives of that character on passenger boats on the Lakes. I understand most of it is done by rail.

Mr. RYAN. Who do you mean by "we?"

Mr. DWINNELL. Du Pont.

Mr. MANN. Considerable quantities are shipped on passenger boats, and on special boats in doing their work on the Lakes.

Mr. DWINNELL. In a case where we have to send large quantities we use our own boats.

Mr. MANN. I do not know of any freighters that would carry anything of the sort, according to my observation.

Mr. SHERMAN. Proceed, Doctor.

Doctor DUDLEY. Well, gentlemen, have you any further questions to ask in regard to further features of the bill?

Mr. RUSSELL. I want to ask about section 4. Do you mean to so word section 4 that nothing except liquid nitroglycerin and the other explosive mentioned in that section can be shipped?

Doctor DUDLEY. No; we mean that those two can never be shipped.

Mr. RUSSELL. You say:

That it shall be unlawful to transport, carry, or convey liquid nitroglycerin, fulminate in bulk in dry condition, or other like explosive between a place in a foreign country and a place within the United States, or a place in one State, Territory, or District of the United States and a place in any other State, Territory, or District thereof, on any vessel or vehicle of any description operated by a common carrier in the transportation of passengers or articles of commerce by land or water.

Do you mean to exclude that entirely from shipment?

Doctor DUDLEY. Yes, sir. I would like to expand upon that just a little bit. The liquid nitroglycerin, the liquid itself, looks much much like the ordinary bottle of glycerin. The process of manufacture

does not change the nature or appearance of it much. It is not transported or used, so far as my knowledge goes, anywhere or in any way excepting in torpedoing wells. No railroad company ever thinks of such a thing as carrying liquid nitroglycerin, nor do they think of carrying such a thing as dry fulminate of mercury. That is the material used in the manufacture of the percussion cap.

Mr. RUSSELL. How do you get it from one place to another?

Doctor DUDLEY. We do not carry it. It is made up into dynamite. Dynamite, as I tried to explain yesterday, is wood pulp, nitrate of soda, sulphur, and other constituents 40 pounds, and 60 pounds of liquid nitroglycerin put in and stirred together, and the material when so made looks very much like brown sugar. That is the material that we are transporting—wood pulp, nitrate of soda, sulphur, and other constituents.

Mr. BARTLETT. How are you going to get the nitroglycerin to the place of mixing if you can not transport it?

Doctor DUDLEY. That is done inside the works.

Mr. MANN. When you get it transported, these gentlemen want to know whether you pound out the nitroglycerin. [Laughter.]

Mr. ESCH. How do you get out the nitroglycerin?

Doctor DUDLEY. It is a very simple process. We will suppose there is a large wooden tub or iron vessel—because iron vessels are now used—that will hold, maybe, 5 or 6 barrels, or perhaps 10 barrels. Into that is placed a mixture of the strongest sulphuric and nitric acid that can be made. Then into this mixture, which is previously made the day before, so that it may cool off, for it generates some heat when the acids are put together—with this is put, in the large tub, liquid glycerin, the ordinary simple glycerin that you can buy ordinarily in the drug store or anywhere. That is poured in in a stream, and agitation takes place, and the nitric acid under those conditions combines chemically with the glycerin, forming—

Mr. RUSSELL. What becomes of the sulphuric acid?

Doctor DUDLEY. The nitroglycerin as fast as formed is insoluble and settles to the bottom, if allowed to stand. This combination of the glycerin with the nitric acid generates heat, and it is essential and necessary to keep the thing cold in some way, usually by surrounding the vessel with ice. If we do not abstract that heat which is formed by the chemical combination about as fast as it is formed—and there is a thermometer, and that is what the man who makes it keeps his eye on—if we do not keep the temperature down the whole batch will blow up by its own heat, and that is the cause of the frightful explosions that frequently take place in explosive manufactories. The stuff gets hot, and the whole thing goes up. Now, then, let us suppose we have our glycerin poured in and properly mixed, and the whole thing is done. It takes half or three-quarters of an hour, the whole operation. The acid is on top and the nitroglycerin is on the bottom. The old method used to be to take out a plug in the bottom and allow the whole thing to run into another tub about ten times as big, with water in it to get rid of the acids. At present the acids are drawn off, to be used over again. After the principal proportion of the acids has been drawn off the nitroglycerin is dropped into a large tub with a large amount of water in it and washed, to wash the excess of acid out. Very well. After the first washing the water is thrown away, and then a second one, and then it is treated with a solution of caustic—a

caustic solution, which is an alkali and combines with any acid that is left. Now, if the free acid not combined is not removed, the resulting nitroglycerin is so intensely sensitive to shock that it will be very hazardous to transport, and one of the regulations we have here is to cover that very point of the actual neutralization of the nitroglycerin when formed. Then after it is washed and neutralized it is taken frequently in rubber or leather hose down to the mixing factory, or a man, according to the old practice, would take a couple of rubber bags of it and carry it from the nitroglycerin house to the mixing house.

Mr. ADAMSON. You would not allow anybody but religious men, who are ready to go, to carry those bags? [Laughter.]

Doctor DUDLEY. I myself have stood at the side of a tank with 3,000 pounds of nitroglycerin in it, and I was very respectful at the time. [Laughter.] One of the Du Ponts who was connected with the business subsequently lost his life by an unforeseen and unexpected explosion at that very point.

Mr. RUSSELL. I was asking for information. What part does the sulphuric acid play in the manufacture of this product?

Doctor DUDLEY. So far as we know, it keeps the nitric acid concentrated. Water, H_2O , as the chemists state it, is separated from the glycerin in the process of nitrification. Now, the water that is formed would dilute the nitric acid if nitric acid alone were used, and in a short time you would not get sufficient strength, or you would not have sufficient strength, owing to the dilution of the nitric acid, to produce the proper combination. Now, by the use of sulphuric acid, which is very fond of water, it takes the water and keeps the nitric acid concentrated. That is the function of the nitric acid.

Mr. RUSSELL. You spoke of drawing off the acid and letting the nitroglycerin off into a tub of water. Is the nitroglycerin in liquid form?

Doctor DUDLEY. Yes, sir. If I had a bottle of the commercial glycerin here and a bottle of the nitroglycerin here, you could hardly tell the difference. It is of a yellowish, slightly amber color.

Mr. RUSSELL. The nitroglycerin is of greater specific gravity than the water?

Doctor DUDLEY. Yes; considerably greater.

Now, coming back to the question of the transportation of liquid nitroglycerin, there are two substances that are so hazardous to move from one place to another that by agreement all over the world, so far as I know, no transportation company or common carrier attempts to carry them, so that we simply put that clause in the bill as a prohibition, covering liquid nitroglycerin and dry fulminate of mercury.

If you care to listen to this—I can talk from now until to-morrow night, I am so full of information on the subject—I may say that liquid nitroglycerin is carried in spring wagons, and usually in the back part of the spring wagon are compartments where the material is put up in tin cans and cushioned. That material is used for shooting wells. You may have an oil well 200 feet deep, and slowly the quantity of oil begins to diminish. That is the history of all wells. At first it may have been a well of 100 barrels a day, and now it may be only 5 barrels a day. They slip one of these cans down to the bottom with an exploder, with an electric wire attached. The men who do this are called "well shooters." When the thing gets to the

bottom it makes a deuce of a racket and breaks up the strata, and your oil comes up, and the well is restored to a good measure of its former productiveness.

Mr. BARTLETT. How far will they carry that in that way?

Doctor DUDLEY. Fifteen or 20 miles.

Mr. SHERMAN. Tell us what is fulminate of mercury?

Doctor DUDLEY. It is a material produced by the action of nitric acid on metallic mercury in the presence of ordinary grain alcohol. The mercury and alcohol being in a vessel, if you pour in nitric acid immediately a combination takes place between the alcohol, the nitric acid, and the mercury, with the evolution of dense red fumes and the generation of a great deal of heat. The resulting product is a granular gray-looking substance that is subsequently washed free from acid, and in a wet condition is unexplodable except by very violent detonations. In the dry condition it is so sensitive that if I had a crumb of it here and rubbed my knife across it that way [indicating] I could explode it without difficulty. It is a material used everywhere for firing big guns, and used in all ammunition almost exclusively. There are a few other substances used as detonators, but not many.

To show you what this means, during the Spanish-American war I received a message from our superintendent of transportation: "Is it safe to accept a cargo of fulminate of mercury from Philadelphia to Frankford Arsenal?" We had to look up the subject, and we found that where that fulminate of mercury is transported in perfect safety and without accident it must be wet. Our regulations provide how it shall be packed in order to make it safe for transportation. But in a dry condition, that and liquid nitroglycerin never could be transported anywhere by anybody. The ordinary history of the "well shooter" is that I believe there is one lone survivor left in Pennsylvania. He has retired from the business, and he is the only one who has been in the business who has not lost his life sooner or later. That is true, gentlemen. I saw the other day that this man had retired from the business.

Mr. SHERMAN. That is, voluntarily; the others involuntarily. [Laughter.]

Mr. ESCH. But the others were elevated. [Laughter.]

Doctor DUDLEY. Yes. Now, gentlemen, are there any other features that you would like to know about? If not, I would like to say just two or three words especially. I have already stated to you—

Mr. BARTLETT. I would like to ask a question with reference to Major Dunn. What position does he hold under the bureau?

Doctor DUDLEY. He is the chief inspector under the bureau of explosives.

Mr. BARTLETT. He holds that under General Crozier?

Doctor DUDLEY. His army position is under General Crozier.

Mr. BARTLETT. How long has he been there?

Doctor DUDLEY. I can not tell you. Probably about thirty years; somewhere near that.

Mr. BARTLETT. Now go ahead.

Doctor DUDLEY. I was going to say that the magnitude of this problem for the safe transportation of explosives is not yet fully appreciated hardly by ourselves, who have studied it most. We have been appalled almost by the size and magnitude of what we

have undertaken to do. To show you, I might say modestly that I was as well informed on this subject as anyone in the United States, so far as transportation goes. I drew the very first regulations ever drawn in the United States, so far as I know, in regard to the transportation of explosives; a single page, about two-thirds of a page, of printed matter. The thing has grown from small to great.

I would like to say further, gentlemen, that when we first started out I said, "We will start with five inspectors." Within two months we had 12, and within two months more we increased the number to 17, with authority to go to 25 as fast as the finances would admit, and we have only got over about one-third of the country yet in our first inspection. Although we have been seven months at work, we have only gotten over about one-third of the country.

Two points of the most vital importance in the transportation of explosives have been developed by the work of the bureau, which very few of us best informed appreciate: First, the number of magazines, each of which may serve as the point of departure for shipments; and more important still, that as the necessary consequence of storage high explosives deteriorate. Consequently a shipment from a magazine may be more dangerous than a shipment from the manufactory direct. The second thing, is that a very large percentage of the cars under the present practice reach destination with the "staying," as we call it—the thing that holds the boxes of explosives in position—broken down more or less, and consequently there is a greater breaking open of packages due to the unavoidable shocks of transportation than is necessary to take place.

Now, this matter was taken in hand with the most careful study. We spent two years making our first draft of regulations. We got that before the American Railway Association, and it went through without criticism, because everybody was beginning to recognize the importance of the problem. We allowed it to run a year with the efforts in use of the railroads ordinarily to enforce the regulations. Then we found that did not work. The regulations were not properly enforced. Then we established the bureau; and now, as I say, we are trying to handle this problem with cooperation both on the part of the manufacturers and the transportation companies. We decided to ask Congress for the least possible that we could ask.

Let us try to handle this problem ourselves first. If we make a mess of it and go to pieces, it is not needed for me to say what your public duty is. But we are trying to handle it. It is going to cost \$150,000 a year to run the bureau. We have only asked you for three things, practically: First, to remove the body of antiquated legislation which at present is a menace, and which in the present conditions of Executive feeling toward corporations may at any time cause us serious difficulty.

Mr. MANN. Can you furnish to us, or furnish to the stenographer, a reference to the laws which this bill would repeal if enacted into law?

Doctor DUDLEY. I can give you the numbers of the Revised Statutes which are especially obnoxious.

Mr. MANN. Can you give that list to the stenographer?

Doctor DUDLEY. Yes.

Following is the compilation referred to:

SEC. 4279. It shall not be lawful to ship, send, or forward any quantity of the substances or articles named in the preceding section, or to transport, convey, or carry the same by a vessel or vehicle of any description, upon land or water, between a place in a foreign country and a place within the United States, or between a place in one State, Territory, or District of the United States, and a place in any other State, Territory, or District thereof, unless the same shall be securely inclosed, deposited, or packed in a metallic vessel surrounded by plaster of Paris, or other material that will be nonexplosive when saturated with such oil or substance, and separate from all other substances, and the outside of the package containing the same be marked, printed, or labeled in a conspicuous manner with the words "Nitroglycerin; dangerous."

SEC. 5353. Every person who knowingly transports or delivers, or causes to be delivered, nitroglycerin, nitrooleum or blasting oil, or nitrated oil, or powder mixed with any such oil, or fiber saturated with any such substance or article, on board any vessel or vehicle whatever employed in conveying passengers by land or water between any place in a foreign country and any place within the United States, or between a place in one State, Territory, or District of the United States and a place in any other State, Territory, or District thereof, shall be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars, one-half to the use of the informer.

SEC. 5354. When the death of any person is caused by the explosion of any quantity of such articles, or either of them, while the same is being placed upon any vessel or vehicle, to be transported in violation of the preceding section, or while the same is being so transported, or while the same is being removed from such vessel or vehicle, every person who knowingly placed or aided, or permitted the placing of such articles upon such vessel or vehicle, to be so transported, is guilty of manslaughter, and shall suffer imprisonment for a period not less than two years.

SEC. 5355. Every person who knowingly ships, sends, or forwards any quantity of the articles mentioned in section fifty-three hundred and fifty-three, or who transports the same by any mode of conveyance upon land or water, between any of the places specified in that section, unless such articles be securely inclosed, deposited, or packed in a metallic vessel surrounded by plaster of Paris or other nonexplosive material when saturated with such oil, and separated from all other substances, and the outside of the package be marked, printed, or labeled in a conspicuous manner with the words "Nitroglycerin; dangerous," shall be punished by a fine of not less than one thousand nor more than five thousand dollars, one-half to the use of the informer.

Also section 4578.

DOCTOR DUDLEY. Then we wanted protection against false billing, whereby, as I explained to you yesterday, if a rate is involved we do not have any safety if there is danger in the material shipped. We wanted that as a help in the handling of this problem. Then we wanted a clear recognition in the statutes that certain explosives should not be handled at all except as a matter of precaution and general information. Then we wanted to have you let us manipulate this matter, or give us a flexible section that would enable us to keep up with the changes that are coming every day. That is section 2, and the proviso particularly, to get a quick decision as soon as we could get it.

I will only add that my heart is in this matter. I have worked on it day and night for years. I have been through quantities of powder manufactories. I was offered the chief inspectorship of the bureau, but could not take it. I think we got a better man, if you will allow me to say so. And I really feel, if you will allow me to put it so far, that I would like to close with one question: Is it not safe and better and wise, with the knowledge you have, to give us this bill and let us go ahead?

MR. ADAMSON. Mr. Chairman, I feel that we would not have exercised due courtesy if we adjourned without giving Doctor Burton a show in this hearing. He knows all about the production of those

explosives which are made in that little peach orchard of his which we call the State of Delaware. [Laughter.]

Representative BURTON, of Delaware. I thank you, Mr. Adamson, and gentlemen; but I just came in for the purpose of acquiring information, not of imparting any or of speaking.

Mr. SHERMAN. Have you any remarks to make, Mr. Dwinnell?

Mr. DWINNELL. There is one suggestion I would like to answer, and that is as to the alleged self-interest of the powder manufacturers.

Mr. SHERMAN. You are the counsel for the association?

Mr. DWINNELL. No.

Mr. SHERMAN. Tell us what you are.

Mr. DWINNELL. I am the general manager of the development department of the E. I. du Pont de Nemours Powder Company. I want simply to say a word in answer to the suggestion regarding that section which provides that no explosives shall be carried on vessels, and to say that no advantage would go to our company, and that I do not know of any company having a monopoly of the lake ports. I want to deny that the section referring to vessels was dictated by or inserted through self-interest. The best answer to that is the fact that the present law provides that anyone shipping explosives on commercial or passenger boats is, according to that provision, subject to fine and imprisonment now.

Mr. SHERMAN. What section is that?

Mr. DWINNELL. We incorporated the same provision in the first section of the proposed law.

Mr. SHERMAN. Is it the section numbered 4279 of the Revised Statutes, regarding nitroglycerin?

Doctor DUDLEY. Yes, sir.

Mr. ESCH. We raised the question the other day when Mr. Sherman brought this bill up that that section might make it embarrassing to ship explosives down to the Isthmus of Panama.

Mr. MANN. As a matter of fact, they do not carry explosives on our regular passenger boats. They are taken down on other boats exclusively.

Mr. STEVENS. Have you made any examination anywhere showing specifically as to each one of the statutes you wish to supplant the reason why it is objectionable?

Doctor DUDLEY. Yes; and I will file it if you will allow me.

Mr. STEVENS. I would like to have some statement on that somewhere.

Doctor DUDLEY. I think that would be well. The section I referred to is section 4279 of the Revised Statutes. This [indicating] is the copy that was asked for. I will give it to the stenographer after I have finished here. It provides that "it shall not be lawful to ship, send, or forward any quantity of the substances or articles named in the preceding section." Section 4278 gives the names of the substances. For our purposes nitroglycerin or nitroglycerin mixed with the absorbent is the one we are concerned about. And here is the point at issue: "Unless the same shall be securely inclosed, deposited, or packed in a metallic vessel surrounded by plaster of Paris or other material that will be nonexplosive when saturated" with nitroglycerin. There is no such substance known. The law is an absurdity on the face of it. You can fire a big gun with a mixture of nitroglycerin and plaster of Paris. It is a tip-top explosive. There is no

such substance. The law itself, as I say, is an absurdity on its face; that is, it contains something that is contrary to a matter of fact.

Then there is the metallic vessel. At present wooden boxes are used for the transportation of dynamite—not liquid nitroglycerin, but dynamite. A metallic vessel is a questionable vessel in which to handle a nitroglycerin product. The question of putting on the cover would be involved; and that, by any construction that we can think of—and we have gone over this matter very carefully—would bring two metallic surfaces together. If, now, the cartridges leak a little bit, owing to the fact that the box happens in some portion of the time to get upside down, or gets thrown out of condition in any way, or in handling it nitroglycerin gets between those two metallic surfaces, and then the box gets a bump, you will surely get an explosion. It is believed that some of the explosions that have taken place in transit have been due to nitroglycerin leaking out a little bit and getting between a nail head in the box and a nail head in the floor of the car, and the ordinary jar of transportation would fire it.

The metallic vessel, judging from the best expert knowledge that I can get on the subject, is of questionable safety.

These statutes go on to say that for every offense a fine of \$1,000 and imprisonment shall be imposed. If that law were enforced to-day the railroads would, as a matter of self-protection, be compelled to simply stop the transportation of explosives. And yet one-half of the money goes to the informer. Now, you can see what position we are in, sir.

Mr. BARTLETT. That has been the law for many years, has it not?

Doctor DUDLEY. It has been the law for many years, but it has apparently been, as we say, a "sleeping dog." I have never known a case in which that law has been cited, except one; and that was the case that I mentioned here a little while ago, against the Southern Railway. The explosion at Jellico is believed to have taken place as a result of firing into the car, using the car as a target and firing a rifle bullet into it. It is well known that if a single cartridge of nitroglycerin powder, dynamite, is held by a string and fired at with a bullet, if you strike it with the bullet the whole thing will go. That has been done again and again and again and again; and as one of the precautions, in our regulations we require the notice that says that this car has explosives in it, to be put not less than 4½ feet above the floor of the car. Why? Because if we put it lower down, where it will be a good deal handier to put it if the man goes along and tacks it onto the car, it might be used as a target. The lading of explosives rarely goes up above 4½ feet.

So those are the reasons why we want to have this antiquated legislation set aside and repealed, with the exception of section 4578. I supposed that was on this paper.

Mr. SHERMAN. You have it right on there.

Doctor DUDLEY. Yes—also section 4578; and I will turn this over to the stenographer.

Mr. SHERMAN. You mean 4278, do you not?

Doctor DUDLEY. Yes; 4278. Did I misread?

Mr. BARTLETT. Forty-two hundred and seventy-eight.

Doctor DUDLEY. Forty-two hundred and seventy-eight; yes, sir.

The section referred to is as follows:

SEC. 4278. It shall not be lawful to transport, carry, or convey, ship, deliver on board, or cause to be delivered on board, the substance or article known or designated as nitroglycerin, or glycerin oil, nitrooleum or blasting oil, or nitrated oil, or powder mixed with any such oil, or fiber saturated with any such article or substance, upon or in any vessel or vehicle used or employed in transporting passengers by land or water between a place in any foreign country and a place within the limits of any State, Territory, or District of the United States, or between a place in one State, Territory, or District of the United States and a place in any other State, Territory, or District thereof.

MR. DWINNEL. I would like to say a word further. This law that we are considering to-day was drawn before dynamite was a commercial factor and before dynamite was shipped in this country. The man that framed the law either had wonderful foresight or had read in the scientific papers of the time of dynamite, which was being spoken of; but it was drawn several years before dynamite ever appeared as an article of commerce. It covers it perfectly, however; and if you were to stop (as the Doctor suggests it would be necessary to stop) the transportation of explosives, I think there is not a man in the room who has ever seen the panic that would occur within two weeks. Two-fifths of the revenues of the Pennsylvania Railroad Company come from explosives directly, as they estimate.

DOCTOR DUDLEY. From the freight produced by explosives.

MR. DWINNEL. Yes; from the freight produced by explosives, coal and iron and limestone and all of the building materials; and what else is there? So that it is an important subject to the country in general to see that something is done. The railroad people claim that they can not continue under the present conditions, and if they were to enforce the regulations it would put us in a much worse position so far as safety is concerned; and it would be physically impossible for the manufacturers to comply with them within six or seven months, even. So it would result in a shutdown of necessity.

MR. BARTLETT. What has awakened you now to the necessity for a modification of these laws, which have existed so long and have been violated in the transportation of explosives? Why is it that you are just realizing that they ought to be changed now, and you ought not to be allowed to continue to violate them?

MR. DWINNEL. Three years ago Mr. McCrea, of the Pennsylvania Railroad Company, was interested in getting some legislation through. The bill introduced by him was objectionable to the powder manufacturers. I was down to watch the progress of that bill, and we opposed it as best we could.

MR. BARTLETT. Who is Mr. McCrea?

MR. DWINNEL. Mr. McCrea is the president of the Pennsylvania Railroad Company.

MR. BARTLETT. Oh, yes.

MR. DWINNEL. Our objection to it was based upon the ground that while it provided a tax, and quite a serious tax, upon our product, there was no resulting safety; and when the representatives of the railroads saw our side of the situation, they conceded, I think, the most of our argument. Our offer to them was that we were willing to concede a cost if it would make for safety; that we would concede anything in reason; and upon that basis we came together to work out a bill. In looking over this subject I read the Revised

Statutes of the United States in connection with it, and at once wrote to our people and called their attention to the law. Mr. McCrea, I think, called it to the attention of your people first, did he not?

Doctor DUDLEY. Yes, sir.

Mr. DWINNELL. That was within the past year, I think; and we had then to determine the question whether we would stop shipments and bring on serious trouble or comply with the law, or what we would do.

Mr. SHERMAN. Prior to that time, as I understand you, Mr. Dwinnell, you had both been acting practically in ignorance of the law?

Mr. DWINNELL. Yes, sir.

Mr. BARTLETT. What brought it to your attention?

Mr. DWINNELL. The act of Mr. McCrea in getting this legislation introduced.

Doctor DUDLEY. And that followed the Harrisburg action?

Mr. DWINNELL. Yes, sir. So that looking into the question of legislation, we naturally went into our own statutes.

The CHAIRMAN. In this legislation that seems to be satisfactory to the manufacturers, as you represent them, there is absolutely no prohibition at all or no requirement of them except that they shall not falsely invoice or mark packages. That is the only prohibition that there is upon you, is it not?

Mr. SHERMAN. Oh, they must go further; they must pack in certain ways.

Mr. DWINNELL. There are certain provisions as to packing and marking?

Mr. STEVENS. They must comply with the regulations.

Mr. SHERMAN. Yes.

Mr. DWINNELL. The product must be in satisfactory condition to ship. The one item alone of the new regulations will cost us, I think, something like \$75,000 a year.

The CHAIRMAN. Well, even that regulation is one that you have something to say about? You are a part of this bureau, are you not?

Mr. DWINNELL. No; we are not a part of the bureau. They consult with us. We are like territorial delegates in that respect.

The CHAIRMAN. But you are quite satisfied that they would not adopt any regulation that was not entirely satisfactory to you?

Mr. DWINNELL. Well, if they did we would go to the courts.

The CHAIRMAN. In other words, there is not any imposition at all upon the manufacturer? It is all upon the carrier.

Mr. DWINNELL. No; the manufacturer must deliver it in satisfactory condition to them for handling, or they can refuse to take it; and what is satisfactory is well known. The tests are well known. I would like to ask you, by the way, Doctor, before you close, to explain your leaky dynamite again.

Doctor DUDLEY. I will be glad to do that.

Mr. DWINNELL. And the railroads would refuse to take it, as they can; besides which we can not afford to make it that way. It is too costly for us to rework it. It is cheaper to explode it.

The CHAIRMAN. It is all optional with you, after all. You say you can not afford to do it.

Mr. DWINNELL. I think the railroads have the whip hand in this respect.

The CHAIRMAN. You have not been obeying the law heretofore; you have been paying no attention to it heretofore.

Mr. DWINNELL. Oh, the package that we have is safer than the package provided by the law. The package provided by the law is an unsafe package.

The CHAIRMAN. And therefore you will not obey it?

Mr. DWINNELL. I do not know why they did not obey it. They were not obeying it; and when, as I say, he discovered this law and called their attention to it, it would have been impossible to have revolutionized the manufacture and made the change necessary to go to the tin package and the plaster of Paris casing. You have got to assemble all your raw materials, and have all those items to consider, besides this change of plant.

Mr. MANN. If this bill should become a law, you will repeal all the provisions which now relate to how explosives shall be packed?

Mr. DWINNELL. Yes, sir.

Mr. MANN. And then there is nothing left that requires you to pack them in any manner at all except as you may have regulations in force?

Mr. DWINNELL. Yes.

Mr. MANN. And you can dispute any of those?

Mr. DWINNELL. We have the right to raise the question as to their being reasonable.

The CHAIRMAN. Then there is, as I said before, nothing obligatory upon you except that you shall not be guilty of deceit in the marking of your packages?

Mr. DWINNELL. Well, I do not understand it as you do.

The CHAIRMAN. Please point out some of the prohibitive provisions of this statute, or some of the requirements that are imposed upon the manufacturer by this statute or by this bill.

Doctor DUDLEY. If you will allow me just a second, I think I can clear that up for you. The regulations issued by the railroad company provide the essential features of safety so far as safety is an element of manufacture.

The CHAIRMAN. Yes; I understand that, Doctor; but Mr. Dwinnell says they are not obligatory upon them, that they have no part in the making of them, and they of course reserve the right to dispute any of them.

Mr. DWINNELL. Section 3 provides that the common carriers shall, within three months, prescribe regulations.

The CHAIRMAN. Yes; and you will observe them or not, as you choose; and you have just now stated that you will dispute them in the courts.

Mr. DWINNELL. If we thought it was improper, and only so. That would be necessary.

The CHAIRMAN. So that there is not anything in this entire statute that bears in any prohibitive sense upon you or makes any requirement upon you, excepting that that is contained in section 5?

Mr. DWINNELL. As a manufacturer do you mean?

The CHAIRMAN. Yes.

Mr. DWINNELL. Not at all. More than that, I think it could not very well. It is not interstate.

The CHAIRMAN. It could not? You think Congress has no power—

Mr. DWINNELL. Not over the factory; no.

The CHAIRMAN (continuing). No power to legislate with regard to the manner in which you shall pack a dangerous explosive that is to be a part of interstate commerce?

Mr. DWINNELL. But it may not be. There are some plants that do not ship a pound outside of their States.

Mr. SHERMAN. Of course, in reference to that Colonel Hepburn's question does not apply. He does not mention any part that is shipped within a State. Colonel Hepburn's question expressly said that which was to enter into interstate commerce.

Mr. DWINNELL. I think they could take it at the door when it became interstate commerce. I do not think they could begin any farther back.

Mr. SHERMAN. What do you say?

Mr. DWINNELL. I think that when it became interstate commerce, then they could take charge of it.

Mr. BARTLETT. When it was manufactured for the purpose of interstate commerce?

The CHAIRMAN. After it left your possession?

Mr. DWINNELL. After it has started, yes; or, for that matter, when we have it piled up ready to be shipped and marked.

Mr. ESCH. If it is intended for interstate commerce, the Federal jurisdiction applies? Is that right?

Mr. DWINNELL. Yes; but what I mean is that they could not enter the door of our factory with their inspectors if they wanted to. That is something for the State.

The CHAIRMAN. Then up to this time, as I understand it, you, as a representative of manufacturers, have been impeding legislation?

Mr. DWINNELL. No.

The CHAIRMAN. And have been opposed to that that was heretofore proposed?

Mr. DWINNELL. We were impeding improper legislation, as was agreed to by those who offered it.

Mr. SHERMAN. I think you are in error there, Mr. Dwinnell. Were you opposing the bill that I introduced in the last Congress, and which passed the House?

Mr. DWINNELL. Yes, sir.

Mr. SHERMAN. I certainly do not concede that that was improper legislation, nor does any member of this committee, nor does any Member of the House.

Mr. DWINNELL. I did not mean it that way, Mr. Sherman. You misunderstood me. I should have said, instead of "improper," "legislation which did not provide all that was necessary." It covered a part of the subject; and when we came to look into the question of how it would act we discovered that in actual practice it would not work well.

The CHAIRMAN. Because the provisions were not sufficiently strenuous upon the manufacturer, and you, as a manufacturer, wanted more strenuous and vigorous legislation?

Mr. DWINNELL. No; it was strong enough, but we were none of us at that time as well schooled in explosives, and the transportation of explosives in particular, as we are now.

Mr. SHERMAN. That is all right.

Mr. DWINNELL. Yes; I certainly do not want that impression to go out, Mr. Sherman.

Mr. SHERMAN. But you stated distinctly that those who offered the proposed legislation admitted now that it was not proper. As a matter of fact, they do not.

Mr. DWINNELL. I say I take back the word "improper;" but Doctor Dudley, as you just saw, agreed that it should be withdrawn because it was imperfect.

Doctor DUDLEY. I think, gentlemen, there is a little misunderstanding. If you will allow me, I think I can straighten it out. The bill introduced by Mr. McCrea—

Mr. SHERMAN. Mr. McCrea did not introduce the bill.

Doctor DUDLEY. I beg your pardon, gentlemen—the bill fathered by Mr. McCrea.

Mr. MANN. It was fathered by Mr. Sherman.

Doctor DUDLEY. I stand corrected again.

Mr. SHERMAN. I do not know whether the bill I introduced was drawn by Mr. McCrea or not. I think it was not.

Doctor DUDLEY. I think you will find it was, sir, if you will allow me.

Mr. SHERMAN. I think you drew it yourself, Doctor.

Doctor DUDLEY. No; I did not. I tried to modify it, and I wish he had consulted me before the bill was drawn, if you will allow me to say so, and say it with deference to him.

Mr. SHERMAN. I then thought, and still think, the bill was absolutely proper and should have passed. I do not think it went far enough, but it was excellent as far as it did go.

Doctor DUDLEY. The bill that was withdrawn (you will remember, Colonel Hepburn, that Mr. McCrea wrote you a letter asking that you withdraw the bill) was withdrawn in the interest of allowing the transportation companies and manufacturers to see if they could not handle this problem themselves without legislation.

Mr. MANN. That was a bill introduced three or four years ago.

Doctor DUDLEY. That was three or four years ago. Then, subsequent to that, we still asked—and this, I think, is the bill that Mr. Sherman had in mind last winter—that Congress give us protection against false billing.

Mr. SHERMAN. Yes; that is the bill.

Doctor DUDLEY. That is right; and I think that was most eminently proper and desirable legislation; but it did not quite cover the ground, and did not give the same protection and help us as the present bill does. That is the point.

Mr. MANN. I think the bill the witness refers to was the first bill.

Mr. DWINNELL. The first bill was the one I meant. It was the one that Mr. McCrea discussed with him afterwards. I certainly was not referring to the one passed by this committee.

Mr. MANN. That was the first one we had before us, and that was reported out.

The CHAIRMAN. That was the bill that proposed to have some surveillance over the manufacturers, and that proposed to put some restraints upon them; and it was those restraints that these gentlemen were here opposing. They are in favor of this bill now because it does not impose any obligation upon them, excepting that it tries to keep them in the line of morals in avoiding deceit and false billing.

Mr. DWINNELL. We also objected to that bill because it went into the details of packing and marking, and in that respect it was just as

objectionable as any other bill. But I trust, Mr. Sherman, that you understand my correction. I am glad it is cleared up. I had no intention of—

Mr. SHERMAN. I simply did not propose to have it go in the record that I said that the bill which I had introduced, and which this committee had unanimously passed, was not a proper bill.

Mr. DWINNELL. Well, the bill was withdrawn.

Mr. SHERMAN. The bill was not withdrawn. The bill passed this House. It failed to pass the Senate.

Mr. DWINNELL. I mean the one that I am talking about.

Mr. SHERMAN. But you said it was my bill. You are speaking of another bill. Let us have the record straight; that is all I desire. In what you said a while ago, then, you had no reference to the bill which I introduced in the last Congress, and which this committee reported, and the House of Representatives passed?

Mr. DWINNELL. Not at all.

Mr. SHERMAN. That is all; I simply wanted to get it right on the record.

Mr. MANN. Will this proposed legislation give the powder trust an advantage over the independent concerns in enforcing regulations which might be to the advantage of the trust? You will have considerable influence in the making of these regulations.

Mr. DWINNELL. The regulations will be made—your committee will make them, Doctor, will they not?

Doctor DUDLEY. The regulations—

Mr. MANN. I am trying to get the information from Mr. Dwinnell.

Mr. DWINNELL (continuing). And then referred to this committee of ours?

Doctor DUDLEY. The present regulations that are in force now were made by the committee of the American Railroad Association. Mr. McCrea was chairman; I was one of the members, and Mr. Marr was another, and so on.

Mr. MANN. We went over that before.

Doctor DUDLEY. The regulations proposed, which are a revision of those, were made by the bureau, by Major Dunn, Mr. Ellis, the secretary of the Railroad Association, and myself in consultation with the manufacturers, as I have already given the names.

Mr. MANN. Yes; you testified to all of that, Doctor, very fully.

Doctor DUDLEY. Yes.

Mr. DWINNELL. I do not know that there will be any advantage to anyone in the rules. I do not know what it would be.

Mr. MANN. You are the largest shippers of powder, are you not?

Mr. DWINNELL. Yes; we are the largest shippers.

Mr. MANN. And you necessarily have considerable influence with the railroads over which you may or may not ship?

Mr. DWINNELL. I suppose we would have the same influence that usually goes with the amount of shipments.

Mr. MANN. And these regulations will be made up, probably, to suit you?

Mr. DWINNELL. No, sir; that has not been their attitude.

Mr. MANN. Well, that is your attitude, as you expect the regulations will be satisfactory; you are opposed to any proposition which would not leave them so that they could be satisfactory?

Mr. DWINNELL. When I said that we would oppose any improper regulations, I meant to say, take a case where they should insist upon

some regulation which did not make for safety in any way, which they were willing to concede did not make for safety, which could bring no possible benefit to anyone, and which would add to the cost.

Mr. MANN. Yes; but you expect to be the judge of that?

Mr. DWINNELL. No; the courts will be the judge of that.

Mr. MANN. But here are regulations which are voluntary regulations as far as this bill is concerned, made after consultation with you. Might it not easily be that you could procure provisions in those regulations which would redound to the benefit of the powder trust and result in great injury to the independent concerns?

Mr. DWINNELL. No, sir; I do not believe the railroads would permit it.

Mr. SHERMAN. Now, Mr. Dwinnell, if that is all you have to suggest I will ask General Humphrey if he desires to be heard on this matter?

General HUMPHREY. No, sir.

Mr. BARTLETT. I want to ask this gentleman one or two more questions. Do I understand you to say that you are a lawyer, Mr. Dwinnell?

Mr. DWINNELL. Yes, sir.

Mr. BARTLETT. What sort of an indictment could you frame against a man under section 5 for simply violating the regulations prescribed for the transportation of dynamite or other explosives by yourselves and the railroads? How could you convict him of committing a crime? You say in section 6 that it shall be a crime for a man to violate any of the provisions of this law, and you prescribe that regulations about this kind of transportation shall be made not by Congress but by railroads and shippers.

Mr. DWINNELL. I think it would be in the ordinary course.

Mr. BARTLETT. You think you could prescribe that it should be a crime to violate not a law passed by Congress but a law made by private individuals or corporations? Do you think you could convict anybody under that provision?

Mr. DWINNELL. It was our intention to have it so that they could be convicted. To tell you the truth about it, I do not claim to be an expert—

Mr. STEVENS. That is not the statute.

Mr. DWINNELL. In drawing the bill we did the best we could, as Doctor Dudley has well said.

Mr. STEVENS. If they do not make regulations, then it is illegal; but if they do make regulations, it is legal.

Mr. BARTLETT. I understand that, but suppose they make regulations and they are violated in the way of transportation?

Mr. STEVENS. There is no penalty for that.

Mr. BARTLETT. Exactly. Then how will you enforce this law, if there is no penalty for violating the regulations?

Mr. SHERMAN. Mr. Chairman, it is quite evident that we will need to take this matter up in executive session, and inasmuch as General Humphrey said he did not desire to be heard—

Mr. BURTON. Mr. Chairman, may I ask a question? I would like to ask for an explanation of how the fact that any powder company or manufacturer of explosives owned vessels of their own on the Great Lakes for the transportation of their product could give them a monopoly. That question was asked.

Mr. MANN. I should think the answer would be so simple that it would not need an answer.

Mr. BURTON. Why? Could not any other company own a vessel and use it on the Great Lakes for that purpose?

(An informal discussion followed.)

Mr. BARTLETT. I want to ask this gentleman a question. You represent the Du Pont Company, do you, as superintendent of it?

Mr. DWINNELL. Yes.

Mr. BARTLETT. It has been spoken of as a trust. It is a trust, is it not—a combination?

Mr. DWINNELL. Not that I know of.

Mr. BARTLETT. You do not know that it is?

Mr. DWINNELL. No, sir. You will have to find some one else to answer that question.

Mr. BARTLETT. They do not let you know about that?

Mr. DWINNELL. If they are, I do not know anything about it.

Mr. STEVENS. There is one question I would like to ask. In section 4, at the top of page 3, the word "like" is used. What does that have reference to?

Mr. DWINNELL. They are discovering every once in a while some new high explosive.

Mr. STEVENS. Does it have reference to extremely sensitive explosives or does it have reference to the general subject of high explosives? I think it is very important for you to define that.

Doctor DUDLEY. May I answer that?

Mr. STEVENS. Somebody ought to answer it.

Doctor DUDLEY. Fulminate of silver is an exactly similar material to fulminate of mercury, only more sensitive; so that clause was put in to cover that or any other similar behaving material.

Mr. STEVENS. Why do you not say "or similar sensitive explosive?"

Doctor DUDLEY. That might be wise. We thought we had covered it; but I would not criticise your wording at all.

Mr. STEVENS. The word "like" might be construed broadly to cover any high explosive; and that would prohibit the transportation of any high explosive, which you do not want to do.

Doctor DUDLEY. No; that is right. I did not see any ambiguity at the time, but possibly there is one there. "Or other like explosive"—that is, fulminate of mercury in bulk, in dry condition—"or anything as dangerous as liquid nitroglycerin," we would say.

The CHAIRMAN. "Or other like sensitive explosive."

Doctor DUDLEY. That would confine it, then, wholly to the fulminates, would it not?

The CHAIRMAN. I do not know about that.

Doctor DUDLEY. Possibly it would be well to say, "or other as dangerous."

Mr. SHERMAN. "Equally explosive."

Doctor DUDLEY. That would involve the strength of the explosive.

Mr. DWINNELL. That would drag in gun cotton again.

Doctor DUDLEY. Yes; we are treading on a pretty narrow margin here, and almost every one of these words has been squabbled over among ourselves in trying to get this thing in a shape where we would not run across snags.

The CHAIRMAN. How would "perilous" do?

Mr. BARTLETT. I want to ask this gentleman one other question, and then I believe I will be through. If we do not permit the manu-

facturers or the railroads to have the dispute referred to the Interstate Commerce Commission, and then after that a right of appeal to the courts as provided, will you then be in favor of this bill, whether that provision is in or not?

Mr. DWINNELL. Certainly.

Mr. BARTLETT. You do not want that in?

Mr. DWINNELL. I do not know that we do.

Mr. SHERMAN. He would favor it either way, as I understood him.

Mr. DWINNELL. Any way. The thing we are anxious about is this: There was a bill that passed the House last year and did not go through, and we want that to go through.

Mr. SHERMAN. You want the bill that was passed last year?

Mr. DWINNELL. Yes; there was one passed last year by the House, and it went to the Senate, I should say, and I think it was opposed there and did not become a law.

Mr. SHERMAN. Yes.

Mr. DWINNELL. Now, we want that to pass.

Mr. BARTLETT. Do you want that or this?

Mr. DWINNELL. Well, that is the same thing; it has been incorporated—

Mr. SHERMAN. The provisions of that bill, Mr. Bartlett, are in this bill; but this bill does a lot that the bill of last year does not do.

Mr. BARTLETT. Then you do not want this bill?

Mr. DWINNELL. Yes.

Mr. BARTLETT. Which one do you want? Do you want the one that was passed last year or this one?

Mr. DWINNELL. The one that passed last year did not go far enough. That would be all right.

Mr. SHERMAN. Please answer that question plainly. Do you want this bill or last year's bill?

Mr. DWINNELL. We want this one.

The CHAIRMAN. I would like to ask you a question. Are the products of the Du Pont Powder Company and its associate companies covered by patents in any way, or are their methods protected by patents?

Mr. DWINNELL. We have patents; naturally we are getting patents all the time.

The CHAIRMAN. I ask with reference more particularly to smokeless powder.

Mr. DWINNELL. To commercial powder—why, I think there is no patent covering smokeless powder.

The CHAIRMAN. Or any of the processes or methods?

Mr. DWINNELL. Excepting a new powder we have, and that probably will not be patented after all.

Mr. MANN. If you patent it, it makes it public; if you do not patent it, it is secret.

Mr. SHERMAN. Mr. Chairman, we shall need to fix a day hereafter for executive session. I will not ask the committee to fix it now. I move that we adjourn now.

Doctor DUDLEY. May I say, Colonel, that if any further information is wanted from me I shall be very glad to furnish it? There is nothing secret, nothing hidden, nothing as to which I do not want to give you all the information I have.

(The committee thereupon adjourned.)

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE OF THE HOUSE OF REPRESENTATIVES

ON

S. 24 AND H. R. 6264 TO INCREASE THE EFFICIENCY OF THE PERSONNEL OF THE REVENUE-CUTTER SERVICE

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

TO INCREASE THE EFFICIENCY OF THE PERSONNEL OF THE REVENUE-CUTTER SERVICE.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Tuesday, February 11, 1908.

The committee met this day at 10.45 o'clock a. m., Hon. William P. Hepburn, chairman, presiding.

The CHAIRMAN. The committee will be in order. The regular order to-day is the consideration of Senate bill No. 24, to increase the efficiency of the personnel of the Revenue-Cutter Service.

Mr. MANN. The first bill is the Senate bill. Are the two bills identical—Senate bill 24 and House bill 6264? Did the Senate make any amendments to the bill?

STATEMENTS OF MR. BEEKMAN WINTHROP, ASSISTANT SECRETARY OF THE TREASURY, AND CAPT. WORTH G. ROSS, CHIEF OF THE REVENUE-CUTTER SERVICE, ACCOMPANIED BY LIEUT. F. C. BILLARD.

Captain Ross. It is the same, but the Senate made amendments.

Mr. MANN. They are not identical.

The CHAIRMAN. Mr. Secretary, we will hear you.

Mr. WINTHROP. Mr. Chairman, Captain Ross will answer as to any details about this bill. I only wish to state that the Department has given it very careful consideration, and I believe that its passage will add materially to the usefulness of the organization of the Revenue-Cutter Service, with comparatively a slight increase of cost. At the present time we have 47 vessels, 221 commissioned officers, and about 1,500 enlisted force. The head of the Service is a captain, and there are 36 others of the same grade, which is the grade corresponding to that of major in the Army. This bill provides for a captain commandant, with the grade of colonel in the Army, which is a sufficiently low grade considering the number of the force. The bill also provides for the grade of senior captain. It also provides, in addition to this grade of senior captain, for the grade of senior engineer, and an additional number of second and third lieutenants. These are essential, inasmuch as the Service is growing every year, and there are a great number of additional calls made upon it which were not made upon it a few years ago.

I believe, as I stated before, that it would add a great deal to the efficiency of the service and make the promotions in the proper order.

46 EFFICIENCY OF PERSONNEL OF REVENUE-CUTTER SERVICE.

At the present time the system is rather top-heavy. Captain Ross will give you detailed answers as to the organization of the Revenue-Cutter Service, as you may wish.

The CHAIRMAN. What do you mean by "top-heavy?"

Mr. WINTHROP. I mean to say that there are 37 captains, and there is no higher grade above that, and the captain commandant is one of 37.

The CHAIRMAN. You mean it is not top-heavy, but that there is no chance of promotion?

Mr. WINTHROP. Perhaps I should put it that way. It is not evenly distributed.

Mr. ADAMSON. It stands bottom upwards, with the top down. [Laughter.]

The CHAIRMAN. What is the chance of promotion? How long will it take, in the ordinary course of events, for your youngest lieutenant to be a captain?

Mr. WINTHROP. I think Captain Ross had better answer as to those details.

Mr. RICHARDSON. Does not the same number govern in the Revenue-Cutter Service as governs in the Navy?

Mr. WINTHROP. They have higher ranks in the Navy.

Mr. HUBBARD. The principles are the same, but the facts are not.

The CHAIRMAN. You see, there is nothing above a captain now, Mr. Richardson; no matter how long a man may serve, he can never get above the rank of captain.

Mr. WINTHROP. He would be a lieutenant-commander.

The CHAIRMAN. The captain here ranks as what?

Mr. WINTHROP. As a lieutenant-commander in the Navy, or major in the Army; and the captain commandant has no higher rank than 36 other officers in the line, over whom he has jurisdiction.

Mr. HUBBARD. For what period and how is the assignment made to that position?

Mr. WINTHROP. For an indefinite period.

Mr. HUBBARD. How is he selected?

Mr. WINTHROP. By the Secretary of the Treasury.

Mr. WANGER. At the expiration of his service as chief, what becomes of him then?

Mr. WINTHROP. He can be reassigned to other duty.

The CHAIRMAN. When he ceases to be captain commandant he goes back to the line?

Mr. WINTHROP. He goes back to the line and becomes one of the thirty-six other captains provided for in the present organization.

The CHAIRMAN. And that assignment by the Secretary may have been of a junior captain?

Mr. WINTHROP. May have been any captain at all.

The CHAIRMAN. So that it is possible that after he has commanded the entire corps, he may go back to the position of junior in the corps and have 36 gentlemen superior to him?

Mr. WINTHROP. Yes, exactly.

Mr. RICHARDSON. Now, as I understand you, you have not any commandant in the Revenue-Cutter Service at all?

Mr. WINTHROP. No. We have a captain who is assigned to the duties of chief of the Revenue-Cutter Service. We have no commandant.

Mr. RICHARDSON. You want a man promoted to the position of captain commandant, and give him the rank of colonel in the Army?

Mr. WINTHROP. Yes, or captain in the Navy. We diminish the number of captains by 6, and create an additional grade of senior captains, which rank as lieutenant-colonel in the Army or commander in the Navy.

Mr. MANN. You say that this bill in your judgment will increase the efficiency of the Revenue-Cutter Service. May I ask in what manner?

Mr. WINTHROP. Well, I think it will increase the efficiency by having a better scheme of promotion, by having an additional number of second and third lieutenants, by creating the position of engineer in chief, and by having senior engineers, and also an additional number in the lower grade of engineers.

Mr. MANN. Well, in what manner will that increase the efficiency of the service by having senior captains?

Mr. WINTHROP. It is an additional grade, which will provide a supervisory grade by having a number of captains who can act as supervisors of different districts.

Mr. MANN. You mean these senior captains shall not do duty on revenue cutters. In what way will they supervise?

Mr. WINTHROP. For instance, we had one sent up to Alaska to supervise the operations that we have every year in regard to the sealing trade.

Mr. MANN. How would a senior captain supervise differently from the methods now pursued by an ordinary captain?

Mr. WINTHROP. He would not.

Mr. MANN. Then, how would it increase the efficiency of the service?

Mr. WINTHROP. It would create promotions, and I think any scheme that creates a better system of organization increases the efficiency of the body.

Mr. MANN. But how does this create a better scheme? Is it not simply a theory that you create more efficiency by providing increases of salaries and promotions? Is that the only theory?

Mr. WINTHROP. No, sir. That is not the only theory. This increases the number of second and third lieutenants.

Mr. MANN. In what manner will it increase the efficiency of the service to create the 6 additional senior captains?

Mr. WINTHROP. Well, of course, the captains probably will not do any more than they do at the present time, but it will put them on a fairer basis, and any system that is on a fairer basis increases the efficiency, in my opinion.

Mr. MANN. It may be a just matter to pay them more salary and put them on higher grade, but how does that increase the efficiency?

Mr. WINTHROP. It will make the service more attractive.

Mr. ESCH. Are there any resignations now from the rank of captain?

Mr. WINTHROP. I do not know. Have there been any resignations recently, Captain Ross?

Captain ROSS. Not from the rank of captain, but there have been from the junior grades.

The CHAIRMAN. Do you think that the brevets of major-general and lieutenant-general improve the efficiency of the Army when

given, or do you think the Army would be just as efficient if there were no grade above that of colonel?

Mr. WINTHROP. No. I am not qualified to speak of such matters, but I think the Army is more efficient by having superior grades.

Mr. MANN. Do you think it would make the work of the colonel more efficient to call him "general?"

Mr. WINTHROP. No, sir. You would not in that condition have a proper system of organization. I think it would be just as bad to have a large number of generals and no privates as it would be to have all privates and no commissioned officers. I do not think that regiments having all generalissimos and no privates would be effective.

Mr. MANN. There is no such thing in the Army as senior captain, except as they rank on the regular roll.

Mr. WINTHROP. No; except lieutenant-colonel. The name is not material.

Mr. MANN. I can see a reason for giving a captain, detailed in charge, a superior rank, because he is in command of all of them; but what is the theory of giving one captain in charge of a revenue cutter a higher title and higher pay than any other captain in charge of another cutter? Do you think you could maintain that service without putting all on an equal grade, and on a higher grade than that, in the course of a few years?

Mr. WINTHROP. Oh, yes. We would have that higher grade limited, you see, to 6 captains.

Mr. MANN. It is limited now, when there is no higher grade.

Mr. WINTHROP. I think you could do it just as well as you now keep the Army down and not make all major-generals and lieutenant-generals. The argument you apply would apply exactly the same to the question of 10 colonels.

Mr. MANN. There is no distinction in the Army as to pay in the same grade. It does not make any difference whether a man has been captain in the Army one day or a number of years, except the matter of longevity pay, and that applies to the Revenue-Cutter Service equally for twenty years or one day. In the Army a captain gets the same pay and same title. You propose to make a distinction here.

Mr. WINTHROP. A distinction in grade, and not merely in name. If you want to call them inspectors, or commanders, or anything else, it could be done. The senior captain is merely a name.

Mr. MANN. That is why I ask what is the reason for this distinction. Are they to command revenue cutters or do some other duty?

Mr. WINTHROP. What other duty they would do would be chiefly supervisory duty. I mentioned one case, supervising the Alaskan duties.

Mr. MANN. Explain that to us. How is it?

Mr. WINTHROP. For instance, we send up there five or six revenue cutters. We station an officer at Unalaska, and he has charge of those six vessels, and he is charged with all the duties assigned to those six vessels.

Mr. HUBBARD. You mean that is the case now?

Mr. WINTHROP. Yes, sir; that is the case now. Of course, if we had a senior captain, he would have that same duty, and he probably would not do it any more efficiently than he does it at present, but it

makes for a better organization. For instance, if you put a major in command of a regiment in the Army, that major would undoubtedly be as efficient as if he was named a colonel.

Mr. MANN. How many revenue cutters do you have at any one time in the Alaskan waters?

Mr. WINTHROP. It was five or six. Which was it, Captain Ross?

Captain Ross. It was five or six. I can not say which.

Mr. MANN. Were these vessels all under the direction of one officer at Unalaska?

Mr. WINTHROP. Yes, sir; they were all under the direction of one officer, Captain Munger.

Mr. MANN. Were they commanded by captains?

Mr. WINTHROP. They were commanded by captains.

Mr. MANN. Were these captains under the direction of Captain Munger?

Mr. WINTHROP. Yes, sir; they were under the direction of Captain Munger.

Mr. MANN. Does that state of affairs exist anywhere else? How is it over in New York, where they have two or three revenue cutters?

Mr. WINTHROP. Sometimes, Mr. Mann, we get the revenue cutters together for inspection and drill. Of course they are under the command of one officer at such time. That is not what you mean. You mean under the command of one officer for active operations.

Mr. MANN. You have two or three revenue cutters in the New York district. Is there anyone in charge of them outside of the Washington office?

Mr. WINTHROP. There is a superintendent of anchorages. He has charge of the harbor boats. That is a class of duty to which we would probably assign one of the senior captains.

Mr. MANN. Would he have any jurisdiction over the other revenue cutters coming into the port of New York?

Mr. WINTHROP. Not unless they are assigned to him; unless they report to him. Here is an illustration: One of the duties that we are called upon to perform in the spring a great deal is that of patrolling courses whenever there are rowing races, or patrolling courses whenever there are yacht races. In that case one officer is in command of all the fleet of revenue cutters. But that is not such an important work, though it shows that they do have several vessels under the command of one man at one time.

Mr. WANGER. Last summer was Captain Munger in command of a vessel?

Mr. WINTHROP. He was on shore.

Mr. ESCH. Does he hold command over all the captains there? How did you select him?

Mr. WINTHROP. Captain Ross recommended him because he was the most efficient officer to take charge.

Mr. ESCH. Although he was junior to some of the captains?

Mr. WINTHROP. He was not junior to any captains in command at that place. I think he is the ranking captain of the list.

Mr. RICHARDSON. Now a captain commandant is selected from the senior captains, is he not?

Mr. WINTHROP. From either the grade of senior captain or captain as provided in the bill.

Mr. RICHARDSON. How many captains have you got?

Mr. WINTHROP. We have 37 of those places.

Mr. RICHARDSON. How many lieutenants?

Mr. WINTHROP. We have the same number of first lieutenants.

Mr. RICHARDSON. I want to be informed along this line, because my memory is not good. Is it not a fact that when legislation was enacted here by Congress some years ago the Revenue-Cutter Service was recognized substantially as an arm of the Navy, as a branch of the Navy? In that legislation were not all the officers of the Revenue-Cutter Service put upon the same rank with officers of the Navy?

Mr. WINTHROP. I do not remember that.

Mr. RICHARDSON. That is the fact, is it not? That is my recollection.

The CHAIRMAN. Is that true? Is it not true that while the legislation looked to putting the engineers, for instance, on a certain rank, giving them their rank and status—and it did give them that—yet by some kind of construction the Department has refused to recognize that? They do not even call them lieutenants. They are simply known as engineers.

Mr. WINTHROP. They should be given the rank.

The CHAIRMAN. It was the intention of the law to give them that rank, but they have been degraded from it, and now they have no recognition whatever. The oldest engineer in the Revenue-Cutter Service, in the mess room, and everywhere else, is junior to the youngest fellow that comes from the academy now.

Mr. RICHARDSON. What I was getting at, Mr. Chairman, from recollection, is that in the Fifty-seventh Congress we had long hearings and elaborate and careful investigations of this whole matter, and that by the bill reported by this committee the Revenue-Cutter Service was recognized as an arm of the Navy, and the officers, the captains, and lieutenants, and so forth, were all put upon the same level and same grade and same pay and rank as the corresponding officers of the Navy. I believe I am correct about that.

Mr. MANN. There is no distinction in the Navy between the line and Engineer Corps. There is such distinction in the Revenue-Cutter Service. It runs clear through.

The CHAIRMAN. The reason for that, Mr. Mann, is this: In the personnel bill of the Navy they wiped out entirely the Corps of Engineers. There are no engineers in the Navy at all. The work of that kind in the Navy to-day is done by warrant officers, and all that vast amount of machinery in a huge battle ship is under the control of a warrant officer. You see the results of that in the bursting of the boilers of the *Bennington* and in the blowing out of the tubes of the *St. Louis*, announced, I think, in this morning's paper. There is no engineer in the engine room; that is, there is no commissioned officer there. In this bill that was referred to we preserved the rank of the engineers, but the Secretary of the Treasury has degraded them, and now refuses to give them their rank, and they are not even known as lieutenants, and the oldest and most accomplished engineer in the Revenue-Cutter Service would get into a boat after the youngest graduate of the school.

Mr. RICHARDSON. That is a manifest injustice and wrong.

The CHAIRMAN. This bill, it is thought, would correct to some extent that usurpation.

Mr. RICHARDSON. You say that the Secretary of the Treasury has given such construction as that to the position of engineer?

The CHAIRMAN. That is my understanding.

Mr. WANGER. Mr. Winthrop, suppose some disability had happened to Captain Munger last summer. Would one of the captains in the Alaskan waters by reason of that fact become the commanding officer of the Alaskan fleet, or would each one of the captains have acted separately until orders had been received from the Secretary of the Treasury?

Mr. WINTHROP. They would have operated independently, as I understand it, until they had received directions from the Secretary of the Treasury, assigning all the vessels to the command of one of the officers. I am not sure about one thing, and I would like to ask Captain Ross, if we ever assigned a junior captain to the rank of directing a senior captain?

Captain ROSS. Yes, sir. There has been an assignment of that kind. That has reference, however, to operations in New York Bay during the regatta for the Lipton Cup. Our fleet was commanded by Captain Walker, who was junior to one or two other captains in the fleet.

May I interrupt for a moment? Mr. Mann, you were speaking about the senior captains, what their duties would be. Under the law one of our officers has to be assigned as inspector of the Life-Saving Service. That is one of the most important positions in the Life-Saving Service; in fact, I think it comes next to the General Superintendent of that Service. This bill contemplates having one of the senior captains in that position, because it is a position of large responsibility. We have in the port of New York a supervisor of anchorages, which is another important post. He has charge of the anchorages in the East River, in the North River, and in the Kill von Kull, and out to Sandy Hook; and for the efficiency of our Service it is far better to have an officer there of superior rank than a captain. That is another place for a senior captain. Then we have the important position of superintendent of construction and repair of ships. That is one of the most important places in our Service. That officer has under him the inspectors of labor and materials in the various shipyards. He also should have a rank that is commensurate with his responsibilities and duties. That makes three places.

We have on the Pacific coast an officer who has general supervision of vessels there, who has charge of various repairs, and has a great deal to do with the movements of the ships and their duties and various other matters pertaining to the Service. He also should be an officer of superior rank. One of the greatest difficulties we have in the Service is to convene boards—boards of inquiry, boards for the trial of officers and for the trial of men—boards in which there should be officers of suitable rank. Frequently we have to put on officers who are junior in rank to the man being tried, which is contrary to all notions of military procedure, and is not right. We ought to have, and if this bill is enacted into law we would have, at least several suitable officers that we could place upon boards and courts. They would have proper rank to serve on boards of investigation, boards of inquiry, trial boards, and so forth. I think that is an answer to your question, is it not, Mr. Mann?

Mr. MANN. That is simply increasing the salaries of certain officers of the Revenue-Cutter Service, and is in no wise supervisory.

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Captain Ross. This bill, with the exception of section 13, which provides for additional officers, increases certain salaries by bestowing advanced rank on 6 captains and 6 engineers and adds to the service only 2 officers, a captain commandant and an engineer in chief, with the rank, respectively, of colonel and lieutenant-colonel.

Mr. HUBBARD. But under certain circumstances the number of senior captains may be increased, as, for instance, on the expiration of the assignment of the captain commandant?

Captain Ross. Under this bill the number of senior captains can not be increased. It is to remain at 6, except when the captain commandant serves four years, or other tour of duty. Then he goes back and can be appointed a senior captain, or resumes his lineal place in the line.

Mr. HUBBARD. That is, every four years one could be added to the number of senior captains?

Captain Ross. No, sir. There is a provision that there can be only two on the active list as additional numbers. That provides against the situation you have mentioned.

Mr. MANN. Practically, Captain, so far as most of these senior captains are concerned, it is simply a matter of increase of salary?

Captain Ross. Increase of salary, yes, sir; and of rank.

Mr. MANN. Of course the salary goes with the rank.

Captain Ross. That is right.

Mr. MANN. There ought to be a very good reason for that. Of course that is not supervisory. That is what I was asking the Assistant Secretary about. What is the pay now?

Captain Ross. The pay now, the basic pay, for a captain is \$2,500, and he gets 10 per cent for every five years' service, not to exceed 40 per cent additional, so that the difference of pay would be \$500.

Mr. MANN. What is the pay for a captain in New York, including his pay and allowances and everything else?

Captain Ross. A captain in the Service now gets \$2,500. That is his basic pay.

Mr. MANN. What allowance does he get?

Captain Ross. When he is on board ship he has no allowance. When on shore duty he has the same allowances as are provided for army officers.

Mr. MANN. I want to find out what it is. What is the total amount?

Captain Ross. A captain's pay is \$2,500. He gets a 10 per cent increase every five years, which brings his pay up to \$3,500. He is allowed \$12 a room, up to and including five rooms.

Mr. MANN. That is \$60.

Mr. ESCH. That is only when he is on shore?

Captain Ross. Yes, sir. He gets, in addition to that, light and heat, which is variable. It rarely exceeds \$200 a year and is often less.

Mr. MANN. He gets \$60 a month for rent?

Captain Ross. He gets \$60 for five rooms.

Mr. MANN. That is \$60 for rent, five rooms at \$12 per month; \$60 per month rent, and \$200 per year for light and heat.

Captain Ross. Some get a trifle more and some get less. It depends on what the conditions are.

Mr. MANN. Is that all they get?

Captain Ross. That is all.

Mr. Esch. Here I notice in section 1, when you raise these 6 captains to senior captains, they are to have the pay and allowance of lieutenant-colonels in the Army. Is that amended?

Captain Ross. It is not amended.

Mr. MANN. What traveling expenses does the inspector of the Life-Saving Service get?

Captain Ross. The traveling expenses in our Service are discretionary with the Secretary of the Treasury. The inspector of the Life-Saving Service gets his traveling expenses from the Life-Saving Service. He receives actual expenses only.

Mr. MANN. Are you sure about that?

Captain Ross. Yes, sir. He gets his actual expenses. In our service, however, it is discretionary with the Secretary of the Treasury as to whether he be paid mileage or actual expenses. As a rule we usually pay mileage to an officer who permanently changes his station, but to those who do not permanently change we pay actual expenses only. For instance, here in Washington I get actual expenses only.

Mr. MANN. Actual expenses for what?

Captain Ross. For traveling. For instance, if I am ordered to New York or elsewhere to inspect a ship, to look after the construction of vessels, or on any other public business, I am paid my actual expenses to and from the place.

Mr. MANN. You do not get the "rake-off," then, that they get in the Army? I do not mean you personally, but I mean the people in your Service.

Captain Ross. We do not get any "rake-off."

Mr. MANN. They get 7 cents a mile.

Captain Ross. There are instances where a man loses on mileage, and where he would even up if actual expenses were paid instead.

Mr. Esch. That is only on short trips.

Captain Ross. If you ordered a man on board duty and gave him mileage to New York and he had to stay there several weeks, he would be considerably out of pocket.

Mr. RICHARDSON. There is a bill now pending, I understand, Captain, to increase the pay of the Army and the Navy. Why should not the Revenue-Cutter Service come in that bill, just like the Army and the Navy?

Mr. MANN. It is in that bill.

Captain Ross. If the pay is increased for the Army, the Revenue-Cutter Service would under the law have its pay increased also; that is, for officers of the same rank as they have in the Army. That is the law now.

Mr. MANN. Does the Navy give the longevity pay to warrant officers?

Captain Ross. They have longevity pay in the Navy for length of service.

Lieutenant BILLARD. I do not know whether they have for the warrant officers or not.

Captain Ross. The warrant officers in our service do not compare with the warrant officers in the Navy. They are an entirely different class of men.

Mr. MANN. In what respect?

Captain Ross. In the Navy a warrant officer gets something like \$1,800 a year, and my impression is that he gets longevity. In our

service the average pay of a warrant officer is about \$65 a month. They are sailors, and are not as high a class of men in point of education as they are in the Navy. The longevity increase, as the bill provides, would not amount to very much in our service. I have here, if you desire to know, the increases for each section of this bill—the additional cost of maintaining the service.

Mr. Esch. What is the total increase?

Captain Ross. The total increase in this bill, which includes 20 per cent for the enlisted force, is \$210,000. But I believe that in one particular we have overestimated. I mean the estimate which has reference to clothing for the men. We have put down \$30,000 for clothing for the enlisted force. This clothing a man could receive only in case he gets an honorable discharge. This year there were given in our service 200 honorable discharges only. That would bring that amount down to about \$9,000, although we have estimated for \$30,000, so that the total additional expense would be certainly not more than \$200,000. My personal belief is that it would be in round numbers just about that amount.

The 10 per cent additional pay for the enlisted force was added to the bill by the Senate. We have a great deal of difficulty with our men, for this reason: While they get practically what the enlisted force of the Navy gets, yet they have to work harder, and have very little time or chance for recreation; the consequence is that we have trouble in keeping them.

To show you the difference, I would like to compare two ships of about the same tonnage, one in the Revenue-Cutter Service and the other in the Navy. We have the *McCulloch*, of 1,280 tons' displacement, on which we have 8 officers and 61 men. Practically the same class of vessel in the Navy, the *Machias*, of 1,177 tons, slightly less than the *McCulloch*, has 10 officers and 143 men; more than twice as many. Now, at all times our men have to work hard. They are cruising up and down the coast all the time. They have to look after their ships and do a great deal of additional work, and it is very difficult for us to retain men if we pay them only the same wages that are paid in the merchant service. Under the law that is all we can do. Now this additional 20 per cent would make it so that a few of our men would receive probably more than the pay of the same grade in the merchant service, while others would receive less. Take the Lake region, for example: Our vessels are only in commission there during the summer time. That is the period when the seamen there, the firemen, coal passers, and that class of men, get the most pay. They get more pay on commercial vessels than the men in our service, and it is so likewise along the coast in the summer time.

When the yachting season commences the yachts like to secure men from our service, and they are then paid more than we pay them, consequently we have difficulty in enlisting men and keeping them. On the Pacific coast they pay higher wages than they do on the Atlantic coast. The result is that in our service during the last calendar year ending December 31, 1907, our force being about 1,294 warrant officers and enlisted men, the desertions amounted to 494, or 38 per cent. In the Navy the desertions are about 9 per cent and a little over. In the Marine Corps they are 12 per cent and a little over, while in the Army they are only about 8 per cent. This differ-

ence is due to the fact that our men work harder, and more is required of them. When we have sickness crews are reduced, and when any of the men have a leave of absence our complements are affected, and on some ships much trouble is experienced in getting along at all satisfactorily.

Mr. MANN. How does your pay compare with the pay in the Light-House Service?

Captain Ross. I do not know as to that. We did not make a comparison with that Service. If you put a man on a light-ship and get him outside, he can not easily get away.

Mr. MANN. I am afraid you are not familiar enough with that to express an opinion. Do you think it is possible, Captain, to follow a different scheme about paying your seamen—a different scheme from the one in the Navy in this regard?

Captain Ross. I think that unquestionably our men should receive more pay than the men in the Navy, because, unless we do give them more pay, we can not retain them. In a bill that is pending in Congress this year they have allowed for a 40 per cent increase in the pay for the enlisted force of the Navy. In this bill we ask for 20 per cent only. That is one-half of what is being asked for in the Navy, but we thought it would answer our purposes.

Mr. ESCH. Do you punish for desertion from the Revenue-Cutter Service?

Captain Ross. Yes, sir; we punish desertions from the Revenue-Cutter Service. We have a law which permits us to have courts, and a seaman can be imprisoned for a period not longer than one year.

The CHAIRMAN. That is of recent date?

Captain Ross. Yes, sir.

Mr. MANN. What is the rule in the Navy about the retirement of enlisted men on pay?

Captain Ross. The rule in the Navy is that they are retired after they have served thirty years, as this bill provides, except that in the Navy they may retire a man permanently after thirty years of service, whereas by the provisions of this bill we are permitted to use him for light work if we can do so.

Mr. MANN. That is the proviso in this bill that is different from the Navy?

Captain Ross. Yes, sir.

Mr. MANN. How many new lieutenants does this bill add?

Captain Ross. Ten; five second lieutenants and five third lieutenants.

Mr. MANN. Is that caused by the increase in the number of revenue cutters? There has been quite an increase in the number of vessels in recent years. You are now limited by law to thirty-seven officers of each grade. That, of course, was based upon the number of revenue cutters that were in commission.

Captain Ross. Under the old law every time we commissioned a new vessel we were permitted to have additional officers. But under the last law our list of officers is limited.

Mr. MANN. We have added a number of revenue cutters in recent years?

Captain Ross. Yes, sir.

Mr. MANN. Has that increased the total number in commission?

Captain Ross. The increase of officers has reference to the total number we are going to put into commission this year.

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Mr. MANN. Has that increased the total number of cutters in commission? For instance, you do not throw a cutter out every time you add a new one?

Captain Ross. No, sir. The new vessels are not to displace any of the vessels now in the service; so that in this coming year, if the contractors live up to their agreements, we will add to our service seven more vessels, all of which have to be manned.

Mr. MANN. How do you propose to man them? There is no proposition here to increase the number of captains or chief engineers?

Captain Ross. No, sir; but we think we have enough captains. Several of the vessels will probably be first lieutenants' commands. We have a vessel building for Neah Bay, for relief work, and that will probably be commanded by a lieutenant. We will have an ocean-going tug, which will be stationed probably in the waters near New Bedford and Cape Cod. That, in all likelihood, will be commanded by a lieutenant. Then we have a derelict destroyer building, which will be finished in July. This will be a new service to us, since the vessel is being built especially to destroy obstructions to navigation. She will be a captain's command.

Mr. MANN. You have a vessel building out on the Pacific, have you not?

Captain Ross. We have no vessels building there, but we have two vessels building on this side, and they will be taken to that coast. As a matter of fact, our vessels do not have enough officers on board of them. When officers get sick or take leave, the number is reduced on some of our first-class vessels of 1,000 tons to perhaps three or four, which, taking into consideration the necessities, are only about one-half of what the complements ought to be.

Mr. MANN. So that the real increase of your lieutenants here is required by reason of the number of vessels in commission?

Captain Ross. Yes, sir. That is one of the reasons.

Mr. MANN. What other reason is there? Is not that the only reason?

Captain Ross. Another reason is, as I have said, that our vessels generally have not enough officers. I have a list here to show the ships that are now short of proper complements in this respect.

Mr. MANN. Yes; but if we had only the original number of vessels in commission you would have junior officers enough.

Captain Ross. We have not enough with the original number. We lack in watch officers. We have enough captains, but not enough watch officers. Every ship has one captain, and should have sufficient watch officers.

Mr. MANN. You mean a commanding officer instead of a watch officer?

Captain Ross. We have tried to remedy the matter in this bill. We are now 15 officers short in the line, and 15 officers short in the engineering corps. Every first-class ship ought to have three engineer officers on board. We have done some cruising along the coast this year with only two. They are not enough. They can not care for the machinery in a proper manner. We do not have in our service the experienced machinists that they have in the Navy, who can take an officer's place. Therefore we have to rely on our commissioned engineers for all that kind of work.

Mr. Esch. Are you getting enough students at the college over here?

Captain Ross. Yes, sir; but it requires about two years to get a man sufficiently educated and trained so that he can perform an officer's duty on board ship. We have recently had a considerable number of applications. But one of the radical defects in our service is the fact that we have no adequate system of promotions. We hope this bill will give us that. Our service to-day is top-heavy in that we have these 37 captains at the top, and then we go down to grades with less officers in them. We want to invert this situation, so that we will have an authoritative head with fewer officers in proportion at the top and more in the lower grades. We have had in the last three years 38 per cent of our second assistant engineers resign. And why? Because they have so little to look forward to. We try to get the best men, graduates of technical schools and colleges, and all they can hope to reach in our service is a place corresponding to that of captain in the Army. The object of this bill is to give them something more. The life of a corps and its efficiency unquestionably depend upon a proper system of promotions.

The CHAIRMAN. How long will it take a second assistant engineer to get to the rank of a first lieutenant in the Army?

Lieutenant BILLARD. Seventeen years, considering only prospective retirements.

Captain Ross. If to-morrow a cadet engineer comes into our service he would be about 17 years going through the grade of second assistant engineer. The cadet of the line who comes into the service to-morrow would be between fifteen and sixteen years before he got through his first commissioned grade. We have a provision in this bill that after a service of five years in that grade he will receive promotion, but the number of officers will not be increased. That promotion will mean \$100 additional pay to him. In the Navy a junior officer is given promotion after three years' service. After three years an ensign is promoted to junior lieutenant.

Mr. MANN. You propose to promote your second assistant engineers to first assistant engineers after five years' service?

Captain Ross. Yes, sir.

Mr. MANN. How much does that increase the salary?

Captain Ross. About \$100 a year.

Lieutenant BILLARD. Exactly \$100.

Mr. Esch. That is, after he passes the examination?

Captain Ross. Yes; after he passes the examination.

Mr. MANN. What is the reason why you should not have examinations provided for the promotions which you except in section 4?

Captain Ross. In the first place, an officer is rarely, if ever, examined in any service who is appointed to its head or the head of a corps through selection. I refer to the captain commandant or the engineer in chief contemplated in the bill. There are 6 officers on our active list, captains, who would receive promotions to senior captains, and 6 chief engineers, who would be appointed senior engineers if this bill becomes a law, and they would have reached the age of 60 years or thereabout, and there would be no reason for examining them. They have already gone through seven or eight different examinations to get where they are to-day, and if this bill did not pass they would go on without examination. It seems to us that it would be utterly inappropriate and uncalled for to examine those officers. The bill gives advanced rank and pay to these upper 6 captains and chief engineers.

Mr. MANN. How many officers do sections 5 and 6 apply to?

Captain Ross. There are on the retired list 19 captains, 9 chief engineers, and 2 assistant engineers who would be affected by this bill, who have had service in the civil war. That would be an increased expense of \$14,730.

Mr. MANN. Would those captains all be retired as senior captains?

Captain Ross. No, sir; they would be simply retired as captains.

Mr. MANN. I know; but under this bill, I mean.

Captain Ross. They would be retired as senior captains on account of their civil war records. They would receive one grade in advance, the same as the Army and Navy and Marine Corps receive for creditable war service during the civil war.

Mr. MANN. Does that provision about the Army apply to officers who were on the retired list when that went into effect?

Captain Ross. I think so.

Mr. RICHARDSON. What is the pay, Captain, under section 5, of the officers that served in the civil war and are now retired? What pay do they get?

Captain Ross. Their present retired pay, you mean?

Mr. RICHARDSON. Yes.

Captain Ross. The captain receives \$2,625 and a first assistant engineer receives \$1,575 per year.

Mr. RICHARDSON. What pay would they get under the provisions of this bill?

Captain Ross. Instead of getting \$2,625, a captain would get \$3,000—\$375 more.

The CHAIRMAN. Not as retired officers. They would get three-quarters of that?

Lieutenant BILLARD. They would get three-quarters of the pay of the grade.

Mr. MANN. Do not the officers on the retired list now get three-fourths of \$3,500.

Captain Ross. They get three-fourths of \$3,500, that is, \$2,625. The number on the active list who are credited with civil-war service is three captains and four chief engineers.

Mr. ESCH. How long will it be before those are retired?

Captain Ross. These officers will retire prior to June 30, 1911, if they are alive, and the expense would be about \$4,000 additional.

Mr. MANN. There is one case in the Army or Navy where a man served nominally for five days in the civil war, for which service the Government is now paying him, I think, several thousand dollars extra. Is there any such case here?

Captain Ross. We can give you the average in our service. I think it is two years or over.

Mr. MANN. How long have these people served? The average is not in question.

Mr. WINTHROP. There is no such case, Mr. Mann. I have here the dates of the civil-war service in the Navy.

Mr. WANGER. Read them.

Mr. WINTHROP [Reads]:

Active list.—Capt. Horatio Davis Smith, October, 1864–June, 1865; Capt. Francis Tuttle, December, 1863–August, 1866; Capt. Owen Slicer Wiley, July, 1861–March, 1863; Capt. Frank Hamilton Newcomb, November, 1863–May, 1865; Chief Engineer John Richard Dally, January, 1863–April, 1863 (also served

in Army); Chief Engineer Edward George Schwartz, November, 1864–August, 1866; Chief Engineer Henry Clay Barrows, March, 1865–August, 1866; Chief Engineer Henry Capron Whitworth, December, 1863–November, 1865.

Mr. MANN. That is the active list?

Mr. WINTHROP. Yes. Now I will read the retired list. [Reads:]

Retired list.—Capt. Louis Napoleon Stodder, December, 1861–November, 1865; Capt. Washington Clem Coulson, August, 1862–November, 1865; Capt. Aaron Dalton Littlefield, March, 1862–September, 1865; Capt. Robert McEwen Clark, November, 1861–August, 1866; Capt. Warrington David Roath, September, 1861–March, 1865; Capt. John Dennett, January, 1863–November, 1865; Capt. William Foss Kilgore, December, 1864–August, 1866; Capt. William Henry Hand, August, 1862–August, 1866; Capt. William Henry Roberts, May, 1862–February, 1864; Capt. David Allen Hall, June, 1863–August, 1866; Capt. George Henry Gooding, August, 1864–August, 1865; Capt. George Edward McConnell, August, 1861–August, 1866; Capt. Albert Buhner, November, 1861–July, 1866; Capt. James Benjamin Butt, February, 1863–August, 1866; Capt. Charles Hugh McLellan, April, 1863–August, 1866; Capt. Walter Spooner Howland, October, 1863–August, 1865; Capt. Joseph Milburn Simms, August, 1863–August, 1866; Capt. Thomas Mason, July, 1863–August, 1866; Chief Engineer Frank Hamilton Pulsifer, April, 1861–September, 1861; Chief Engineer Daniel Coon Chester, March, 1863–May, 1865; Chief Engineer Marshall Trowbridge Chevers, September, 1861–July, 1865; Chief Engineer Frederick West Holland Whitaker, February, 1862–February, 1865; Chief Engineer Daniel Francis Kelley, May, 1864–August, 1865; Chief Engineer Alfred Hoyt, December, 1863–October, 1865; Chief Engineer Samuel Henry Magee, August, 1863–August, 1866; Chief Engineer William Frederic Blakemore, May, 1864–October, 1865; Chief Engineer Wesley Jason Phillips, October, 1863–January, 1866; First Assistant Engineer James Thomas Keleher, April, 1861–December, 1865; First Assistant Engineer Charles Forest Dyce, August, 1864–October, 1867.

Mr. WANGER. These all date on the active list from 1863? As I understand, those all date in their war records on the active list from 1863? Taking the ones that entered the Civil War at the latest period, it was 1863. How was it on the active list?

Mr. WINTHROP. The latest was March, 1864, to August, 1866. But that was Rogers. Rogers is dead. The earliest one is October, 1864.

The CHAIRMAN. Captain, what are the differences between the Senate bill and the House bill?

Captain Ross. In line 6, first page, in the original bill it is stated that the President is authorized to appoint one captain commandant, who shall serve for a period of four years "unless reappointed for further periods of four years." That was put in to correspond exactly with the phraseology of the bill passed by Congress last year making a Chief of Artillery. The Senate amended that so as to read, "unless reappointed for a further period of four years."

Mr. MANN. Would this proposition limit the appointment to two terms?

Captain Ross. It does not seem so to me, although I am not sure.

Mr. WANGER. It would apparently seem to limit it to two terms.

Mr. MANN. It would seem so. I do not think that is desirable.

Captain Ross. Do you think it does limit it?

Mr. MANN. I am afraid so.

Captain Ross. The artillery bill reads like this: "Reappointed for further periods of four years."

Mr. MANN. You could not appoint a man for further periods all at one time. As a matter of fact, has anyone who has been appointed chief ever gone back in recent years? Has any captain appointed as chief of the Revenue-Cutter Service been sent back to the service?

Captain Ross. He never has; no, sir.

The next amendment of the Senate was to section 6. That section originally was like this:

SEC. 6. That the captain now on the retired list who served as chief of the division of Revenue-Cutter Service prior to April first, nineteen hundred and five, shall have the rank and receive three-fourths of the duty pay and increase of the next higher grade.

The Senate amended it to read like this:

SEC. 6. That the captain now on the retired list who served as chief of the division of Revenue-Cutter Service for ten years and until March twenty-sixth, nineteen hundred and five, shall have the rank and receive three-fourths of the duty pay and increase of the highest grade provided for in this act.

The Senate amendment gives him the rank and pay of the highest grade provided for in this act, which would be captain-commandant. Before it gave him the next higher grade, which would have been that of senior captain or lieutenant-colonel.

Mr. MANN. How much would that increase Captain Shoemaker's pay?

Captain Ross. His present pay is \$2,625. His proposed pay under this would be \$3,375, or an increase of \$750 a year.

Mr. WANGER. When you say "under this," which do you refer to—the original bill or the amended bill?

Captain Ross. I mean the amended bill.

The CHAIRMAN. How long was Captain Shoemaker in the Revenue-Cutter Service? It was all his life, substantially, was it not?

Lieutenant BILLARD. Forty years.

Captain Ross. Now, the next amendment of the Senate is in section 8. It added to that a clause to the effect that the pay of the enlisted force of the Revenue-Cutter Service shall be increased 20 per cent over what they are now receiving. Those are all the Senate amendments.

The CHAIRMAN. Those are the only differences between the two bills?

Captain Ross. Yes, sir; those are the only differences between the two bills.

Mr. MANN. Would there be anything in this bill that would permit to be done what is sometimes done now in the Army and Navy—to retire half a dozen captains as captain-commandants on six different days?

Captain Ross. It would not be possible to do it, so far as I can see.

Mr. MANN. Why not, Captain?

Captain Ross. Well, I say it would not be possible to do it, because you appoint a captain-commandant, and under the law he would have four years to serve. They could not very well displace him in that time, except through his misconduct, or something of that kind, and he would have to be removed to make room for somebody else. This position is the head of the service, and nobody, I think, would utilize that position for such a purpose. It is different with the Army, where you can take a colonel out and make him a brigadier-general. It does not interfere with the military service in that case, but in this case it would materially interfere with the administration of the Revenue-Cutter Service.

Mr. MANN. When these captains reach a certain age they are retired arbitrarily?

Captain Ross. Yes, sir.

Mr. MANN. So that if you had a captain-commandant appointed at the time, and he was serving, it would not be possible to run six people who are going to be retired through that wicket?

Captain Ross. No, sir. I do not think such a thing could happen, because it would be such a violation of good administration that it would not be done.

Mr. MANN. It is a violation of ordinary decency in the Army and Navy, but that does not prevent its being done.

Captain Ross. It would not happen with us I feel certain.

I would like to say, speaking about retired officers, that we have in our service the only surviving officer who fought on the *Monitor*, and we have also, on the retired list, one of the two surviving officers who fought on the *Merrimac*.

Mr. MANN. What advantage will come from calling an engineer a "captain engineer?" Is not that rather an awkward title, to begin with?

Captain Ross. There is this advantage: It gives him a title that corresponds with the actual rank he has with a line officer, and it also gives him a title which he desires and to which there is no objection.

Mr. MANN. What are they called now in practice on the boats?

Captain Ross. We call them "Mister."

Mr. MANN. Is that what the enlisted men call them?

Captain Ross. That is what they usually call them. They generally call a chief engineer, "Chief," in an offhand way.

Mr. MANN. That is what I thought. What do the enlisted men call the other engineers?

Captain Ross. They call them "Mister."

Mr. MANN. They would still be called "Mister," below the rank of captain?

Captain Ross. Yes, sir. But our scheme is this, that an officer can be called by his title or as "Mister" when below the rank of captain. The regulations provide that he can be called either "lieutenant" or "Mister." Ordinarily and socially they call them "Mister." But this gives the engineers a military title. As long as they are in a military service it is a proper thing to give them a title corresponding to their rank. There is no objection to it in the least, and it creates a better feeling, and I believe it is for the good of the service to do it. Anything that will do away with possible friction, you know, is a good thing.

Mr. MANN. It does not involve anything at all?

Captain Ross. No, sir. It does not involve any increase of pay or anything of that sort.

Mr. ADAMSON. Mr. Chairman, it is almost 12 o'clock. I move that the chairman be authorized to report this bill with favorable recommendation. I understand this Senate bill is perfectly acceptable to the Revenue-Cutter Service.

The CHAIRMAN. I think we had better wait. Somebody may want to amend it.

If there is nothing further, gentlemen, we will consider these hearings as closed.

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

OF THE HOUSE OF REPRESENTATIVES

ON

H. R. 15945

RELATING TO THE PERSONNEL OF THE
LIFE-SAVING SERVICE

WASHINGTON

GOVERNMENT PRINTING OFFICE

1908

PERSONNEL OF THE LIFE-SAVING SERVICE.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Friday, February 14, 1908.

The committee met this day at 10.45 o'clock a. m., Hon. William P. Hepburn (chairman) presiding.

The CHAIRMAN. The committee will be in order. The special order for to-day is the consideration of the bill (H. R. 15945) to increase the efficiency of the personnel of the Life-Saving Service of the United States, introduced by Mr. Lovering.

Mr. LOVERING. I suggest that we proceed at once with the bill and whatever amendments may be proposed. I ask that the Assistant Secretary of the Treasury, Mr. Winthrop, be allowed to make a statement.

The CHAIRMAN. Very well.

STATEMENTS OF MR. BEEKMAN WINTHROP, ASSISTANT SECRETARY OF THE TREASURY, AND MR. S. I. KIMBALL, GENERAL SUPERINTENDENT OF THE LIFE-SAVING SERVICE.

Mr. WINTHROP. Mr. Chairman and gentlemen, this bill combines two objects. One is to increase the pay of the life-savers in accordance with the term of service. They are under this bill to receive an increase of 10 per cent after five years' service, 20 per cent after ten years' service, 30 per cent after fifteen years' service, and 40 per cent after twenty years' service, but in no case is the increase ever to exceed 40 per cent. The other provision is that the pension laws shall be extended to those members of the Life-Saving Service who have been disabled in line of duty either through sickness or injury.

The life savers at present, the members of the crews, receive \$65 a month during the months that they are in service. On the Atlantic coast they are in service for ten months of the year. In June and July they receive no pay. On the Pacific coast they are in service all through the year. On the Great Lakes they are in the service during the period of navigation, which is usually about eight months in the year.

As I said before, they receive \$65 a month. They are obliged to mess at the stations, and if they have families they have got to support a table both at the stations for themselves and at their homes for their families. The keepers receive \$75 a month, and there is a superintendent to each district, who receives a higher salary. One thousand eight hundred dollars is paid in two instances, I believe, and \$2,000 in the rest.

For a number of years past there has been great difficulty in securing good men for the Service. In very many stations there are a number of vacancies that can not be filled. In others we have been obliged to take a class of men which we would not have taken a few years ago; and owing to the increased cost of living and the higher wages generally, and the better prospects they have on the outside, there is a disorganization, I might almost say, of the Service. They are decreasing in efficiency rather than increasing. Although the instrumentalities, the boats and other apparatus that we have, are improved and increasing, the personnel, the men, are decreasing in efficiency.

We have at the present time 279 stations; approximately 200 on the Atlantic coast and 20 on the Pacific coast, and the rest on the Great Lakes. One is at the falls of the Ohio River. There are 280 stations at the present time, including one in process of building.

Mr. BARTLETT. Where is that building at?

Mr. WINTHROP. I do not know which one that is.

Mr. KIMBALL. At Tillamook Bay, on the coast of Oregon. Neah Bay, Washington, is also under construction.

Mr. ESCH. How many men are there in the Service, Mr. Secretary?

Mr. WINTHROP. There are 1,898 exactly.

Mr. WANGER. Officers and men?

Mr. WINTHROP. No; surfmen only. We have, of course, a keeper to every station, and the crews vary between 6 and 8, according to the necessities of the Service. Many of the men in the Service have been disabled in the line of duty, and they have been obliged to leave the Service, not having accumulated anything whatever. Some have gone to the poorhouses, and some have been supported by their friends, and others have fortunately had a small amount of money, which is enough to keep them until they die.

Mr. ESCH. Do you know the average number of casualties each year?

Mr. WINTHROP. I do not know whether this will answer your question, but from the fiscal years 1903 to 1907 inclusive, a period of five years, 158 surfmen and 28 keepers were separated from the Service on account of physical disability. If you ask for the number of deaths and number of people killed in the Service—

Mr. ESCH. Yes; killed or injured?

Mr. WINTHROP. This applies to the separations from the Service on account of physical disability. I have not that statement of the number killed and injured.

Mr. STEVENS. How many vacancies have you in the Service?

Mr. WINTHROP. Mr. Kimball says there are something over 500. This report, which was submitted in 1906 on the Senate bill providing for retirement pay, gave at that time a statement of the vacancies in the crews, and although the statement is not exact at the present time, we have not improved in the general conditions.

Mr. STEVENS. Can you not get good men easier now than you could at that time?

Mr. WINTHROP. No, sir; it is getting more difficult all the time.

Mr. MANN. When was this?

Mr. WINTHROP. In 1906.

Mr. MANN. How much did you save on your appropriation last year for the service?

Mr. WINTHROP. I will have to refer that to Mr. Kimball about those figures.

Mr. KIMBALL. I do not remember now, but I can get it for you.

Mr. MANN. They were 500 men short in the Service, and if you have only 1,200 men in the Service you must save a large sum.

Mr. KIMBALL. Somebody took their places. We have to take temporary men when we can not get enlisted men. The stations and crews are kept full always.

Mr. MANN. Are you really 500 short?

Mr. KIMBALL. I think more than that, but the substitutes are taking the pay.

Mr. MANN. Then you are not short?

Mr. KIMBALL. We can not enlist men, but we can hire a tramp for the same pay.

Mr. STEVENS. Why don't you enlist?

Mr. WINTHROP. They are enlisted by examination, you know. It is under the civil service. When there is no eligible list, you can pick up temporary men until the eligible list is established.

Mr. MANN. Would it not be easier to fill up the Service if the Department were authorized to appoint the men rather than get them through the gauntlet of the Civil Service Commission?

Mr. WINTHROP. It would be easier to appoint them, but not easier to get good men.

Mr. MANN. Do they examine them in swimming or anything of that kind?

Mr. KIMBALL. No, sir. They are examined by a form adopted by the Civil Service Commission. I will send you one of those forms.

The CHAIRMAN. Give us some idea of the Civil Service Commission examination for No. 1 surfman.

Mr. KIMBALL. Our No. 1 surfman is just like any other surfman. Now they are subject to examination. We call him No. 1 because he is so ranked by his keeper when he gets there. That is, the keeper is supposed to select the ablest man in his crew for No. 1. This bill proposes to mark the distinction between No. 1 and the others by increasing his salary and giving him \$5 more a month. The examination is a written examination, in which the candidate states his experience as a surfman, and he also has to say whether he is a swimmer or not; whether or not he can swim.

Mr. LOVERING. Is he subject to some physical examination?

Mr. KIMBALL. Yes; he has to be physically sound.

The CHAIRMAN. How far does he have to go in mathematics? Is he examined with reference to the modern sciences?

Mr. KIMBALL. Not at all.

The CHAIRMAN. Don't you regard that as a defect in the system?

Mr. KIMBALL. No I do not.

Mr. BARTLETT. They have different rules for them from what they would have for the ordinary applicants—different rules for the examination of surfmen from those for the usual applicants for employment in the Government service?

Mr. WINTHROP. Yes, sir; entirely.

The CHAIRMAN. Please explain the greater difficulty that there would be under this system of a spoilsman getting in. Is it more difficult? By this amendment do you keep the spoilsman from getting into your Service?

Mr. KIMBALL. Mr. Chairman, I did not come here to defend the civil service. [Laughter.]

The CHAIRMAN. I am serious. This is a very serious question. I want to know if it is more difficult under the present system to keep the spoilsman from getting into this Service.

Mr. KIMBALL. I think it is some, sir; yes.

The CHAIRMAN. What impediments do you throw in the way of the spoilsman getting into this Service?

Mr. KIMBALL. An eligible list is formed as the result of examinations, and when a vacancy occurs the keeper makes a requisition for the certification of candidates, eligibles, and he has a choice of one out of three, the same as everywhere else in the civil list.

The CHAIRMAN. But suppose you had no eligible list?

Mr. KIMBALL. That is the case in a good many districts just now.

The CHAIRMAN. When you have no eligible list, you have to take the tramp that you have spoken of?

Mr. KIMBALL. We have to take a temporary man and report it to the Civil Service Commission and get their approval.

The CHAIRMAN. He is often a tramp?

Mr. KIMBALL. He is often pretty bad material.

The CHAIRMAN. Don't you believe that if the enlistments were made direct by the keeper it would be easier to fill your quota with good, respectable men?

Mr. KIMBALL. I do not think so now, with the wages as they are at present. Formerly, when the keepers used to select their men, they were sometimes influenced to select men who were not, perhaps, the very best men. Postmasters and other men would be interested.

The CHAIRMAN. They can do that now in the absence of an eligible list, can they not?

Mr. KIMBALL. They can as to those temporary men; but they are pretty poor stock, and I do not think they have much influence.

Mr. LOVERING. Is a temporary man exactly in the position of an enlisted man?

Mr. KIMBALL. Yes; so far as his pay is concerned.

Mr. LOVERING. How about his term of service?

Mr. KIMBALL. His term of service is only until the vacancy can be filled.

Mr. MANN. What is the longest service that any temporary man on the list now has been serving?

Mr. KIMBALL. I can not tell you. It is several months.

Mr. MANN. Is it a year?

Mr. KIMBALL. We have some vacancies that have not been filled for a year. We have one station, from which I got word the other day, that there was not a single enlisted man. They were all temporaries. There are several where there are only one or two enlisted men.

Mr. MANN. What districts are there where there is no eligible list?

Mr. KIMBALL. I do not recall those in which there is no eligible list, but I think there is none in the first district. I am not sure about that, however. There are one or two where there is no eligible list at all. There is one district where there are 24 vacancies, and I think only 5 or 6 eligibles.

Mr. MANN. Why don't you appoint those?

Mr. KIMBALL. We do. But often when we call for them they are not willing to enlist. So far as the eligible lists allow, we do appoint.

Mr. MANN. The eligible list runs it, so far as it goes?

Mr. KIMBALL. I am only telling you about an eligible list that has just come to us.

The CHAIRMAN. Is the eligible list for the general service, or is it limited to separate districts?

Mr. KIMBALL. It is for sections in the district and for separate districts.

The CHAIRMAN. How many eligible lists will you have in a district?

Mr. KIMBALL. In some districts we have three sections. I think there are three in the district which Mr. Mann represents, on Lake Michigan.

The CHAIRMAN. Is there any personal physical examination of the men by the Civil Service Commission?

Mr. KIMBALL. Yes, sir. Every man is examined by a medical officer of the Marine-Hospital Service, and he has to be thoroughly sound.

The CHAIRMAN. Now, give us some idea of the formula, the method, the process by which a man could get into your service. What would he have to do in the first instance?

Mr. KIMBALL. He must make application.

The CHAIRMAN. Where is that made to?

Mr. KIMBALL. To the keeper nearest to his residence.

The CHAIRMAN. Where does that go?

Mr. KIMBALL. That application is filled up and handed back to the keeper of the station by the applicant. The keeper then forwards it, with a certificate of his knowledge of the man and his fitness for the place, to the Civil Service Commission.

The CHAIRMAN. Then what is done?

Mr. KIMBALL. The Civil Service Commission compares the different applications and makes up their eligible list from the standing as shown by the answers to the questions propounded in the examination.

Mr. MANN. What examination is there?

Mr. KIMBALL. The examination is a written one, answering various questions.

Mr. MANN. That examination, I suppose, is not made until the application is filed with the Civil Service Commission?

Mr. KIMBALL. Oh, yes. The answers to those questions constitute the examination.

Mr. MANN. There is no examination, then, at all. A man makes an application and answers certain questions upon that, like any other application; but there is no further examination?

Mr. KIMBALL. That is all the examination he has.

The CHAIRMAN. Then a man examines himself?

Mr. KIMBALL. He has to have certificates from respectable citizens to the effect that his statements are true, showing how long they have known him, what his business has been, and so on.

Mr. MANN. It is largely a matter of personal favoritism with the keeper, then? You have to rely on the keeper's judgment, then?

Mr. KIMBALL. Not at all.

Mr. MANN. You require the keeper to certify what his opinion is of the man?

Mr. KIMBALL. The keeper asks certain questions, and makes certain statements; among others, how long he has known him. Very often he does not know him. Very often he has never seen the man. If he has seen him and he is a man of intemperate habits, he so states.

Mr. HUBBARD. Does he not make a point of seeing the man?

Mr. KIMBALL. He sometimes sees him.

Mr. HUBBARD. Does he not require the man to go there?

Mr. KIMBALL. Yes.

Mr. MANN. What method do you take to inform the public of this examination?

Mr. KIMBALL. By advertisements.

Mr. MANN. How do you advertise in Chicago, for example?

Mr. KIMBALL. By poster advertisements issued by the Civil Service Commission, and also in the newspapers.

The CHAIRMAN. Won't you go on now and describe further this process of civil-service examination and enlistment? That application is sent here?

Mr. KIMBALL. That application is sent to the Civil Service Commission. The Commission makes up from those applications on hand an eligible list for each district or each section. The eligible lists are sent to the superintendents of the districts, and when the keeper of a station makes requisition for a man three names are sent to him.

The CHAIRMAN. He makes that requisition on whom?

Mr. KIMBALL. He makes that requisition on the superintendent of the district who has the eligible list.

The CHAIRMAN. Then who sends him the three names?

Mr. KIMBALL. The superintendent of the district. They have to be the first three names.

Mr. ESCH. Where does this medical examination by the Marine-Hospital Service come in?

Mr. KIMBALL. He has to take that examination before. That accompanies his application, and before he is taken into the station he has to have another examination, not less than ten days before he enters the service.

Mr. HUBBARD. Another physical examination?

Mr. KIMBALL. Yes.

The CHAIRMAN. Who is that made by?

Mr. KIMBALL. By a surgeon of the Marine-Hospital Service.

The CHAIRMAN. Take, for instance, a station in some out-of-the-way locality, one of the more remote stations.

Mr. KIMBALL. The man has to go to the place where there is a marine hospital.

The CHAIRMAN. He goes to the medical officer?

Mr. KIMBALL. Yes.

The CHAIRMAN. He makes two journeys to the medical officer?

Mr. KIMBALL. Yes; at his own expense.

The CHAIRMAN. Well, now, then, from the Pacific coast a man at some station remote from the larger cities makes his application or request to go into this service to the keeper of a life-saving station. How long must it be—how much time must elapse—before all of these prerequisites have been accomplished and he will be notified that he will be accepted?

Mr. KIMBALL. I do not know; but considerable time, sometimes.

The CHAIRMAN. Months?

Mr. KIMBALL. I do not know as to that. Usually it would be three or four weeks; perhaps months, yes.

The CHAIRMAN. And in the meantime he is waiting around to get into the service?

Mr. KIMBALL. I do not know what he is doing; attending to his business, if he has any, I suppose.

Mr. KNOWLAND. Let me ask a question, to see if I fully understand the procedure: A man makes out an application for the Service, fills out a blank, as is done in all civil-service applications, and in nearly all civil-service positions after that blank is filled out he takes an examination; but as I understand you the procedure is this Service is simply to take the blank home and fill it out and send it in and that constitutes the examination?

Mr. KIMBALL. Yes; together with certificates as to character.

Mr. RUSSELL. Do you not take the man in temporarily while he is waiting to hear from it? You said a while ago, in answer to the chairman's interrogatories, that the man waited around until his application was passed upon. Now, don't you use that man temporarily as a substitute?

Mr. KIMBALL. No. If there is anybody that the keeper thinks is better—he is obliged to get the best man he can find.

Mr. MANN. If a good man wants employment he usually does not want to wait for it for a year at a time. If you were permitted, when a good man came along without employment and wanted to go into this Service, to take him in at once, don't you think you could fill your Service a great deal more easily than you do now by subjecting applicants to a whole lot of examinations and considerations and then make them wait maybe for a year before they can be appointed?

Mr. KIMBALL. I do not know. I would say this, that at the present wages we could not get them anyway.

Mr. STEVENS. Do you not find that this system of examination and red tape and formalities rather keeps some good men away from your Service? Have you not heard of such instances?

Mr. KIMBALL. It is possible that it may. I do not know.

Mr. KNOWLAND. It seems to be red tape more than an examination.

Mr. MANN. Do you think the men in your Service generally, including the temporary men, are now poorer or better on the whole than they were before the civil-service law was applied to your Service?

Mr. KIMBALL. Very much poorer; but whether it is due to the civil service or not, I can not say.

Mr. MANN. A little while ago you spoke of the postmasters whose bad influence affected enlistments, or might affect them. You do not mean to include the Congressmen in participation in that bad influence, did you?

Mr. KIMBALL. No, sir. I want to say that as a general thing, men of the quality that Congressmen and Representatives are composed of are too large for that. But there are small politicians all around who would be very glad to run the life-saving stations.

Mr. WANGER. Is there any general custom among keepers as to the methods of determining, among the three names that are certified, which one to appoint?

Mr. KIMBALL. I do not know that I understand the first part of your question.

Mr. WANGER. When three names are certified to the keeper, do they send for the men, or do they just arbitrarily select one of the three?

Mr. KIMBALL. They are supposed to have seen the men when they made application; but they have a right to inquire among people as to those three men, and the keeper selects either one of the three he pleases.

Mr. WANGER. Are there not several keepers in each district?

Mr. KIMBALL. Yes. Each station has a keeper.

Mr. WANGER. And may not each of the three eligibles have presented his application to a different keeper, who is not the keeper who requires an additional man?

Mr. KIMBALL. They never are certified to the keeper unless he requires an additional man.

Mr. WANGER. I know; but are there not as many as four keepers in a district, sometimes, for which eligibles are certified?

Mr. KIMBALL. Yes.

Mr. WANGER. Suppose the application has been presented to other keepers than the one who needs the enlisted man and who receives the three certifications: In that case the keeper would not have seen any of the applicants.

Mr. KIMBALL. Yes. Under the civil-service rules a candidate is entitled to three certifications.

Mr. WANGER. Yes; but a keeper may make a call for certifications, they may be sent him. Of the three names that are certified, one of the three men certified may have made his application before this particular keeper, and the other two men, who may be far superior; may have made their applications before other keepers. Would they not?

Mr. KIMBALL. Yes.

Mr. WANGER. And would not the keeper naturally select the man who had made his application through him, the appointing keeper? How about that?

Mr. ADAMSON. In that dilemma, you would probably ask some good Congressman which was the best. [Laughter.]

Mr. WANGER. In the case that I have cited, where one of the three men whose names are certified has made his application through the keeper who requires an additional surfman, that man would have an advantage with that keeper, would he not, in the way of selection over the other two men, even though he was the inferior man of the three? Is not that true? Would not the keeper who had forwarded the application of one of the three men whose names were certified naturally incline to that particular applicant in designating one among the three?

Mr. KIMBALL. I suppose that would depend upon the impression the man made upon him when he saw him the first time.

Mr. WANGER. The other two could not have made any impression at all except that they had shown their bad judgment by going to some other keeper? [Laughter.]

Mr. ADAMSON. That impression would be favorable to the other two fellows. [Laughter.]

The CHAIRMAN. Are the names graded upon this eligible list?

Mr. KIMBALL. The figures that have been made in the examination are given—that is, the first man on the list is the one who passed

the highest examination, and the second is the man who comes next to him, and so on.

The CHAIRMAN. Then in view of the fact that this rating is so dependent upon the statements of the men themselves, it is altogether probable that the better liar gets the higher grading?

Mr. KIMBALL. He makes his statement under oath, and there have been prosecutions for perjury in such cases.

Mr. MANN. Are these men in the classified service?

Mr. KIMBALL. Yes, sir.

Mr. WINTHROP. Mr. Chairman, they have to be certified to by respectable people—people who are known.

Mr. MANN. That does not add anything.

Mr. WINTHROP. I was going to say that the biggest liar might get the position for a brief period, but—

Mr. MANN. The biggest liar is the most eminent citizen. [Laughter.]

Mr. ADAMSON. He may have some good strong lying friends. [Laughter.]

Mr. WINTHROP. Then he would win out temporarily.

Mr. WANGER. The man's showing upon his application would depend very largely upon his skill in apprehending and answering questions, or upon the skill of his coach, who framed his answers for him, would it not?

Mr. KIMBALL. You can judge of that as well as I. I have shown you what the process is.

Mr. MANN. What nationality are the majority of your men?

Mr. KIMBALL. Most of them are Americans, but on the Lakes there are quite a number of Norwegians and Swedes, and upon the Pacific coast the same.

Mr. WANGER. What are the elements which are computed in rating the applicant?

Mr. KIMBALL. Well, physical condition, age, and professional qualifications, including surfmanship, and so forth.

Mr. WANGER. And the showing of the qualifications depends very largely upon the skill exercised in replying to questions, does it not?

Mr. KIMBALL. It depends upon the answers.

Mr. MANN. A bright young fellow from the country would have no show for appointment at all under that system?

Mr. KIMBALL. No; not from the interior. He would have a poor show, I think; but it is important that we should have men familiar with the coast and with surfmanship, particularly in handling boats.

Mr. MANN. And yet most of the people who go into the Navy come from the Western country. They are taken into the Navy, but you do not want them in the Life-Saving Service.

Mr. KIMBALL. In the Navy they take them in and train them. In our Service the men are supposed to be fitted when they enter.

Mr. WANGER. The certification having been made, and the selection from the three having also been made, is the man immediately enlisted, or does he have to undergo a probationary period?

Mr. KIMBALL. He undergoes a probationary period of six months; but he can be dismissed on the second day after if he is found to be utterly unqualified, or at any other time.

Mr. HUBBARD. What is the length of the term of enlistment?

Mr. KIMBALL. One year.

Mr. ESCH. What is the maximum age at which you admit men to the Service?

Mr. KIMBALL. Forty-five years.

Mr. ESCH. Do you dismiss them after they reach that age?

Mr. KIMBALL. No, sir.

Mr. ESCH. How old can you keep men in the Service?

Mr. KIMBALL. A keeper over 55 years of age has to be examined every year. The men are all examined every year, all but the keepers. They are not examined every year, except those over 55 years of age.

Mr. HUBBARD. Who makes the annual examination?

Mr. KIMBALL. You mean physical examination?

Mr. HUBBARD. If it is a physical examination, who makes it?

Mr. KIMBALL. An officer of the Marine-Hospital Service.

Mr. HUBBARD. There is no other annual examination except physical examination?

Mr. KIMBALL. No.

Mr. ESCH. You discharge a man from the Service if, after such examination, he is found to be physically unfit?

Mr. KIMBALL. Yes.

Mr. ESCH. You do not discharge men from the Service because of mere age, do you?

Mr. KIMBALL. No.

Mr. ESCH. You can keep men in the Service up to 65 years of age?

Mr. KIMBALL. Yes. We had a keeper 75 years of age.

Mr. MANN. But he does not have to undergo an annual examination?

Mr. KIMBALL. Yes. He was a very able man, too, when he died.

Mr. LOVERING. You said that the keepers did not have an annual examination?

Mr. KIMBALL. Yes, after reaching the age of 55. But the others, the surfmen, are examined every year. They reenlist.

Mr. HUBBARD. Are those who may be dropped out as physically unfit included in the number, 158, who were separated from the Service in five years?

Mr. KIMBALL. I do not quite understand.

Mr. HUBBARD. I say, the 158 you mentioned includes those who were separated from the Service in that way, as well as those who were disqualified by casualties or disease? The 158 includes all who were separated from the Service for any reason?

Mr. KIMBALL. No; for physical disability only.

Mr. LOVERING. Mr. Kimball, how many men are in the Service now as surfmen who have not passed the civil-service examination?

Mr. KIMBALL. Nobody but the temporary men.

Mr. LOVERING. Then there are 500 people, more or less, who have not passed that examination?

Mr. KIMBALL. I think so.

Mr. MANN. Do you have to get an order from the Civil Service Commission for each one of these?

Mr. KIMBALL. We have to get their approval.

Mr. MANN. For each one?

Mr. KIMBALL. Yes.

Mr. LOVERING. What do they know about it? How are they able to give you any information about it?

Mr. KIMBALL. I do not know.

Mr. LOVERING. It does not amount to anything, the certificate? It is simply on your own judgment; that is, in so far as the Civil Service Commission is concerned, it amounts to nothing?

Mr. KIMBALL. They approve the employment temporarily because they can not furnish us with anybody else.

Mr. LOVERING. What does their approval amount to?

Mr. KIMBALL. It simply enables the men to stay there.

Mr. MANN. It simply is to say they have no eligibles.

The CHAIRMAN. It is in effect a certificate that they can not furnish you with the men, and therefore you must help yourself?

Mr. KIMBALL. That is what it amounts to.

Mr. STEVENS. But you can only employ these men for ninety-day periods?

Mr. KIMBALL. That is all; thirty days first, and then they extend it.

Mr. STEVENS. Now, if you had the right to hire a man for six months, could you not get a better quality of men than when you hire them for only thirty days?

Mr. KIMBALL. If we could pay them better wages, we could. But we have hard work to get anybody with the wages we pay now.

Mr. STEVENS. Will there not be more applicants for places now?

Mr. KIMBALL. Now?

Mr. STEVENS. Yes.

Mr. KIMBALL. Why, now? [Laughter.]

Mr. STEVENS. I see prosperity continues somewhere.

Mr. WANGER. Have you made any recent efforts to secure better men?

Mr. KIMBALL. If you pass this bill, we will get better men, I guess.

Mr. WANGER. Mr. Kimball, has there been an effort recently made to secure additional men?

Mr. KIMBALL. Yes. Our superintendents and our keepers of stations are instructed to get applicants, as many as they can, and the best men they can get. They are always under that instruction.

Mr. WANGER. When and where have the most recent examinations been made or authorized to be made?

Mr. KIMBALL. Well, there is an advertisement about to be issued now for some six districts, and there was an examination made, I think, about three months ago.

Mr. WANGER. During the last three months there is supposed to have been a very considerable falling off in the general industrial activity of the country.

Mr. MANN. "Supposed to have been" is very good.

Mr. COCKS. If I could explain the situation in my own district, I think it would answer the question. I have more life-saving stations in my district, I think, than any other district. These men are excluded from the falling off in the industrial activity entirely. There is no doubt but that all this coil of red tape and intricate paraphernalia is cumbersome and to a certain extent unnecessary. I think it might be just as well if we could cut a lot of it out. But up to the present time, at least, those people down along the bay have not noticed this decline of industrial activity, because they are not engaged in manufacturing business. We have almost none in my district, and for that reason there is no change in that respect.

Mr. BARTLETT. You have not any banks, either.

Mr. COCKS. Oh, the banks are all solid up in my district, every one of them. These men are recruited from the bay men. The great

trouble has been that they have not been adequately paid. There is no doubt about that, and yet the want of industrial activity has not affected them. You do not realize what these men are required to do in the patrol of these beaches at night. The deaths which occur in this Service do not come from men being hit on the head, or things like that, but from pneumonia contracted in the Service, and from other pulmonary troubles.

Mr. HUBBARD. What deaths take place?

Mr. COCKS. Some deaths do not take place for a year or two. They do not occur chiefly from wrecks, but from pulmonary diseases contracted in the Service.

Mr. HUBBARD. Those are included in these 158 in five years, are they not?

Mr. COCKS. I do not know. Some men in my district have enlisted and have been taken sick and have had pneumonia and could not reenlist. There is no record of them any more. They are simply dropped out of the Service.

Mr. HUBBARD. They are separated from the Service. I understood that the number of those separated from the Service in five years was 158 on account of physical disability. These are retired through physical disability, are they not?

Mr. COCKS. I do not know whether they are in all cases. But in one case that I know of, a man was attacked with pneumonia who was already suspected of tuberculosis, and he died. The exposure is something terrific. At night they have to patrol this beach. At many times at high water the tide breaks through and overflows the beach. I have here an illustration [submitting colored map of Long Island] showing the formation of my district. The tide breaks through, and these men have to patrol the beach from one station to another, and many a night when there is a southeastern gale the men are wet through all night. Of course they are ready to go on a wreck every minute. So far as that is analogous to the Navy, it is not in it. This needs experience in order to be able to handle that business. You could not take a landlubber from Illinois and whip him into proper shape to handle this business, as they do in the Navy, where they have other fellows who can teach them. There is no doubt that they are not getting the class of men in these stations that we would get if they had an increase of pay.

Mr. MANN. What pay do the ordinary sailors in your district get?

Mr. COCKS. I try to be a bureau of information, but as to that I can not tell you.

Mr. STEVENS. They do not get any more pay on the coast steamers, do they? It is about the same, is it not?

Mr. COCKS. I do not know about that.

Mr. STEVENS. They get about the same pay as on the ocean liners.

Mr. COCKS. Our coastwise vessels pay more than the trans-Atlantic liners. I know the cost of running a vessel under the American flag is 20 per cent more in wages than the cost under a foreign flag.

Mr. STEVENS. They get about the same pay as the coastwise sailors?

Mr. COCKS. I am not prepared to say what their pay is.

The CHAIRMAN. Mr. Kimball, I wish you would tell the committee how many persons have been separated from the Service in the last year because of disability.

Mr. KIMBALL. I can not tell you for one year. I have given it to you for five years. I have gotten up this information in regard to five years with reference to the pension clause in the bill trying to ascertain what the cost would be.

The CHAIRMAN. How many persons have been separated from the Service because of physical injuries, wounds, contusions, or something of that kind?

Mr. KIMBALL. I can not tell you.

The CHAIRMAN. How many persons have died in the Service or been killed, as the result of their service, while in the line of duty?

Mr. KIMBALL. I can not tell you that at all.

Mr. WANGER. You have those statistics?

Mr. KIMBALL. Yes; I can get them for you.

Mr. ESCH. I think they ought to be given and printed in the hearing.

Mr. WANGER. Are there many cases of exhaustion in the Service from patrolling the beaches?

Mr. KIMBALL. There have been many cases of injuries incurred through patrolling the beach. We have had men perish in prosecuting the patrol.

Mr. MANN. How many have you had of those?

Mr. KIMBALL. None in the past year.

Mr. MANN. When?

Mr. KIMBALL. We have had them incur injuries. For instance, flat-footedness is a disease that comes to these men as a result of patrolling.

The CHAIRMAN. How many stations have there been in the Service where there has been no call during the past year to visit a wreck?

Mr. KIMBALL. There are very few. The first district has 14 stations. During the year ending June 30, 1907, they attended 49 wrecks.

The CHAIRMAN. Define, please, what you mean by a wreck.

Mr. KIMBALL. I mean wrecks, great and small, where a vessel comes ashore, for instance, and the surfmen get to work and get her off, or they save lives from her, or save property. That we call a disaster. The whole number of vessels attended was 838.

The CHAIRMAN. In that district?

Mr. KIMBALL. Oh, no; in the whole Service.

Mr. HUBBARD. In the 279 districts?

Mr. KIMBALL. Yes, in the 13 districts, 279 stations.

The CHAIRMAN. Before we leave that first district that you first spoke of, in which there are 14 stations, you say there were 49 vessels attended to?

Mr. KIMBALL. Yes.

The CHAIRMAN. What was the character of these vessels? Did they include rowboats?

Mr. KIMBALL. I will not say there were 49 distinct cases, because there are one or two where two stations attended. I will read from our annual report the record covering those 14 stations—

The CHAIRMAN. Oh, no; we have not time for that. Give us an idea of the character of the vessels visited. Were they mere rowboats or pleasure boats?

Mr. KIMBALL. No rowboats unless life was endangered. We would not include them. We include steamers, but there are more schooners than anything else, perhaps, and also brigs.

The CHAIRMAN. How many of these 49 were total wrecks, where the vessels went to pieces?

Mr. KIMBALL. I have not the data here now; but I can tell you for 1906.

Mr. WINTHROP. There were 55 vessels totally wrecked last year in all these cases.

Mr. LOVERING. What would be the value of those? Is any estimate made?

Mr. WINTHROP. The value of property involved was \$8,832,000. The value of property saved was \$7,432,000, and the loss was \$1,400,000. The number of lives involved was 5,112. The number of persons lost was 45.

The CHAIRMAN. Now, as to the number of lives saved, what does that mean? Does that mean that through the instrumentality of this Service alone those people were rescued?

Mr. WINTHROP. It does not mean that, Mr. Chairman. It means those were the lives on board the vessels. We can not distinguish whether or not they would have been saved otherwise if the life-saving crews had not attended them. Of course it would be a mere guess, depending on the judgment of a person at the wreck as to how many lives would have been actually lost had the life-saving crews not been there.

The CHAIRMAN. Are we to understand that that number of persons were actually conveyed to the shore through the efforts and appliances of the Life-Saving Service?

Mr. KIMBALL. No, sir.

The CHAIRMAN. I want to get a better knowledge of what these reports include. Suppose a vessel goes ashore and your Service visits that ship, but in addition tugs come and that vessel is pulled off by the tugs. Would that vessel be included in your list of rescues, and would you include in any way the passengers on that vessel as having been saved by you?

Mr. KIMBALL. Not in our list of rescues, because we would not rescue anybody that way.

The CHAIRMAN. That would be included in the 5,320?

Mr. KIMBALL. Yes; if we rendered assistance.

The CHAIRMAN. Would that vessel and its cargo be included in your total of values?

Mr. KIMBALL. Yes, sir. But I would like to read this note which I have put here in our report for 1906.

Mr. MANN. It is included.

The CHAIRMAN. What would be the measure of assistance that would give that vessel and her passengers and cargo a place in your reports?

Mr. HUBBARD. The witness, I understand, desires to read a note which he thinks will answer the question.

Mr. KIMBALL. I think this note will give a better idea than my answers to your questions, perhaps. Against the amount of property given here as "property saved," I make this note [reads]:

It should not be understood that the entire amount represented by these figures was saved by the Service. A considerable portion was saved by salvage companies,

wrecking tugs, and other instrumentalities, often working in conjunction with the surfmen. It is manifestly impossible to apportion the relative results accomplished. It is equally impossible to give even an approximate estimate of the number of lives saved by the station crews. It would be preposterous to assume that all those on board vessels suffering disaster who escaped would have been lost but for the aid of the life savers; yet the number of persons taken ashore by the lifeboats and other appliances by no means indicates the sum total saved by the Service.

Mr. HUBBARD. What is that number of those who were taken ashore by boats and appliances?

Mr. KIMBALL. There were landed by the surfboats 1,026 persons; by the lifeboats, 218 persons; by the power lifeboats, 22 persons; by the power launches, 213 persons; by the river life skiffs, 62 persons; by other station boats, 330 persons, and by the breeches buoy, 189 persons.

The CHAIRMAN. That includes the total number of persons that were carried ashore by your Service?

Mr. KIMBALL. Yes; the number that we took ashore.

Mr. ESCH. That would be over one man for each man in the Service?

Mr. KIMBALL. Yes. [Reads:]

In many instances where vessels are released from stranding or other perilous predicaments by the life-saving crews, both the vessels and those on board are saved, although the people are not actually taken ashore, and frequently the vessels and crews escaping disaster entirely are undoubtedly saved by the warning signals of the patrolmen, while in numerous cases, either where vessels suffer actual disaster or where they are only warned from danger, no loss of life would have ensued if no aid had been rendered. The number of disasters, the property involved, the amounts saved and lost, the number of persons on board, and the number lost are known, and these facts are all that can be expressed statistically with reasonable accuracy. The narratives which follow under the caption "Loss of life" and the brief statements under the captions "Service of crews" and "Vessels warned from danger" convey as adequate an idea of what the life-saving crews actually do in each instance as space will allow.

The CHAIRMAN. Of course we know that the Life-Saving Service rescues a great many people; but you do not pretend that the Life-Saving Service alone rescued all those people. What we want to get at is what your idea is of what the Service actually does in connection with those rescues and the vessels that are wrecked and the value of the property. Give us some idea of the direct instrumentality of the Service with regard to these great totals?

Mr. KIMBALL. I do not know how I can do it in any better way than to give it to you as it is given in our report. It is the report I was reading from just now. Perhaps I did not understand the question, but I am giving you the best information I can.

The CHAIRMAN. You state the general results, general totals, and then in this note you say that all of this is not the work of your Service. Now, can you not from your experience give us some approximation, some percentage, or something of that kind, that will show the actual relation of your Service to these results?

Mr. KIMBALL. I will read again from the report for 1906 [reads]:

In 591 instances vessels valued, with their cargoes, at \$7,966,450 were saved under circumstances which, but for the assistance rendered, would have involved serious or total loss. In 440 of these cases, in which the endangered property was valued at \$2,078,420, the station crews, without assistance other than that afforded by the crews of the imperiled vessels, saved property valued at \$2,060,485. In the 151 remaining instances, involving property valued at \$5,888,030, the services of the life savers were performed in conjunction with those of wrecking vessels, tugs, and other agencies, and the value of property thus saved was \$5,487,890. The station crews

also afforded assistance of more or less importance to 654 other vessels, making a total of 1,245 to which aid was extended. One hundred and seventy-four vessels were warned of danger by the signals of the patrolmen and watchmen of the Service in time to escape disaster. These warnings were given at night in 161 instances, and in 13 instances during the day in thick weather. Ninety-seven of these vessels were steamers. The station crews in this way undoubtedly prevented the destruction of much property, but it is manifestly impossible to estimate in figures the value of their services.

The CHAIRMAN. Now, have you any record of the actual number of persons taken from imperiled vessels by the crews that year?

Mr. KIMBALL. I have read that. I will read it again.

Mr. KNOWLAND. It was almost 2,000 altogether.

Mr. KIMBALL. There were landed by the surfboats, 1,026 persons; by the power launches, 213 persons.

The CHAIRMAN. I remember now. What portion of these vessels from which these people were landed were complete wrecks, or what proportion of those people were taken off by lighters or tugs and wreckers? I want to know whether these people would probably have perished but for the intervention of the Service, or, if they had stayed on their vessels, whether they would have been taken off by somebody else.

Mr. KIMBALL. The number of vessels totally lost was 49. But many people are frequently rescued from vessels who would have been frozen to death or would have died of exposure if they had not been rescued.

The CHAIRMAN. Do you know anything about the number of people who were taken off these vessels?

Mr. KIMBALL. There are tables here which give the number of persons on every vessel.

The CHAIRMAN. Very well. I will examine one of those.

Mr. BARTLETT. That was for 1907?

Mr. KIMBALL. That is for 1906. The report for 1907 is in the press now.

Mr. ESCH. What is the pay of the surfmen?

Mr. KIMBALL. Sixty-five dollars a month.

Mr. ESCH. Does that include rations?

Mr. KIMBALL. No, sir.

Mr. ESCH. Or medical attendance?

Mr. KIMBALL. No, sir; although he is entitled to medical attendance if he is in the neighborhood of a marine hospital. He can go there and have medical attendance.

Mr. ESCH. Does the Government house or furnish quarters for him?

Mr. KIMBALL. He has to stay with the crew at the station.

Mr. ESCH. For married men they have provision, have they not?

Mr. KIMBALL. No.

Mr. MANN. Single men live at the station. They have no house rent to pay. A surfman is not required, though, to stay at the station, is he?

Mr. KIMBALL. Yes, sir; he has to reside at the station.

Mr. CAPRON. A surfman has to stay at the station, but he may try to help to support his mother, for example?

Mr. KIMBALL. Yes; a good many of them support their mothers.

Mr. HUBBARD. Are there any titles of rank in your Service?

Mr. KIMBALL. There are superintendents of the districts.

Mr. HUBBARD. This bill proposes to constitute ensigns and lieutenants, and things of that kind, does it not?

Mr. KIMBALL. It does not propose to constitute lieutenants or ensigns.

Mr. HUBBARD. It proposes to give the men that rank?

Mr. ESCH. No; it is pensions as of that rank in the Navy. Do you ever discharge men for cowardice?

Mr. KIMBALL. Very quickly.

Mr. ESCH. Do you do it?

Mr. KIMBALL. Yes.

Mr. ESCH. How many cases had you last year?

Mr. KIMBALL. Formerly we had no cases; that is, when we had good men. But of late years we have had two or three cases. We have never had many.

Mr. KNOWLAND. Have you made any estimate of the additional cost as provided in this bill on account of the increase of salaries?

Mr. KIMBALL. Yes, sir.

Mr. KNOWLAND. How much is that?

Mr. LOVERING. Did you not have some of these tables made? I understood you had one.

Mr. KIMBALL. I have it here.

Estimated pay of district superintendents, keepers, and surfmen for one year.

[Present rates of pay (except No. 1 surfmen, who are increased \$5 per month) taken as a basic rate, with 10 per cent increase for each five years' service up to 40 per cent (20 years); service prior to January 1, 1903, not regarded.]

Period of service.	Number of men.	Rate of pay per month.	Annual salary.	Aggregate pay per annum. ^a	Total.
DISTRICT SUPERINTENDENTS.					
At \$2,000:					
Over 5 years.....	10		\$2,200	\$22,000.00	
At \$1,800:					
Over 5 years.....	2		1,960	3,960.00	
At \$1,700:					
Over 5 years.....	1		1,870	1,870.00	
					\$27,830.00
KEEPERS.					
Under 5 years.....	1		900	900.00	
Over 5 years.....	264		990	261,360.00	
					262,260.00
NO. 1 SURFMEN.					
Under 5 years.....	26	\$70.00	^b 1,820	16,835.00	
Over 5 years.....	239	77.00	^b 18,403	170,227.75	
OTHER SURFMEN.					
Under 5 years.....	897	65.00	^b 58,305	539,321.25	
Over 5 years.....	736	71.50	^b 52,624	486,772.00	
					1,213,156.00
Total.....					1,503,246.00
Same at present scale of pay.....					1,404,972.50
Increased cost.....					98,273.50

^aAverage annual length of service of all surfmen, nine and one-fourth months.

^bTotal pay per month.

The present bill proposes a longevity system, as the Assistant Secretary has told you, by which there shall be an increase of 10 per cent in pay in five years, 20 per cent in the next five years, and so on up to 40 per cent. That would involve a cost of \$98,273.50.

Mr. MANN. When?

Mr. KIMBALL. Annually.

Mr. MANN. It could not be the same now as it would be after a while.

Mr. KIMBALL. Now, at the present time.

Mr. MANN. It would increase every five years that much more.

Mr. KIMBALL. Some would go out, you know. This is supposing the stations are full.

Mr. MANN. How do you say it will increase that much now on the basis of their being full? The longevity pay does not commence on any new people. What difference does it make?

Mr. KIMBALL. There are ten district superintendents who have been in over five years. Their annual salary, including this longevity, would be \$2,200 each. There are two district superintendents who have been in over five years, whose salary, including longevity, would amount to \$1,980 each. There is one at \$1,700. His salary would be increased to \$1,870. Now we come to the keepers. There is one keeper who has been in less than five years. He would get \$900, being entitled to no longevity increase until he has been in five years. There are 264 keepers who have been in over five years. They would get \$990 each. Of the No. 1 surfmen under five years' service there are 26. They would get \$70 each. Of the No. 1 surfmen who have served over five years there are 239. They would get \$77 each. Other surfmen, under five years' service, 897; over five years, 736. Their total would be \$1,503,246. At present the same men get \$1,404,972.50, leaving a difference of \$98,273.50, by which amount the compensation of the men in the service would be increased.

Mr. MANN. Of course, that is a perfectly fair statement in one sense, but it is hardly a fair idea of what this bill will cost the Government. This is based on the supposition that a large proportion of the people in the Service will not receive the increase. Your present scale is \$1,404,000. If everybody got the full benefit of this bill, it would mean an increase of 40 per cent of that, or nearly \$600,000 increase. That is nearer what it will cost the Government.

Mr. KIMBALL. I do not think so.

Mr. HUBBARD. At the end of twenty years it would be.

Mr. MANN. The expectation in this bill is to keep them in. That is the purpose of it.

Mr. WANGER. Have you made any attempt to compute the cost under sections 3 and 4?

Mr. KIMBALL. As to pensions?

Mr. WANGER. Yes.

Mr. KIMBALL. Yes, sir. It comes to less than \$5,000 a year. Here it is—\$4,900.

SUMMARY OF OPERATIONS OF THE LIFE-SAVING SERVICE FOR THE FISCAL YEAR ENDING JUNE 30, 1907.

Mr. S. I. Kimball, general superintendent of the Life-Saving Service, has completed the report of his Bureau for the last fiscal year.

During the period covered there were 278 life-saving stations in operation, namely, 200 on the Atlantic and Gulf coasts, 60 on the Great Lakes, 1 at the Falls of the Ohio (Louisville, Ky.), and 17 on the Pacific coast (including one station at Nome, Alaska).

In the twelve months covered by the report the number of disasters to vessels occurring within the field of operations of the Service was 838, involving 347 documented vessels, and 491 undocumented craft. Fifty-five of the endangered vessels were totally lost. The value of property imperiled—\$8,832,585—is, however, much smaller than that given in the tables for 1905-6, namely, \$15,041,140. The value of the property saved was \$7,432,985, the property loss being \$1,399,600, as against a loss

shown last year amounting to \$2,775,040. Aboard the vessels meeting disaster there were 5,112 persons, of whom 45 were lost. Eight hundred and seven persons were succored at the stations, 1,140 days' relief being furnished.

The foregoing figures relate to both documented and undocumented vessels, the latter class including sailboats, small launches, rowboats, etc. In the accidents to these smaller craft 1,176 persons were imperiled, 23 of whom were lost. The estimated value of the property involved was \$530,320, of which \$516,585 was saved.

There were 611 vessels, valued with their cargoes at \$5,661,235, saved under circumstances that would have resulted in serious damage or total loss but for the assistance of the life-savers. In 449 of these instances, in which the property imperiled was valued at \$1,270,995, the station crew saved property to the value of \$1,238,935 without outside assistance. In the 162 instances remaining, in which the property endangered was worth \$4,390,240, they worked in conjunction with the crews of wrecking vessels, tugs, etc., saving property to the value of \$4,053,230. The station crews also afforded minor assistance to 714 vessels not included in the preceding figures, making a total of 1,325 to which aid was extended. The number of vessels warned from danger by the signals of the Service patrolmen was 204; these warnings were given at night in 182 instances and 22 were given during the day in thick weather. Ninety-six of the vessels so warned were steamers.

The amount expended for the maintenance of the Service during the year was \$1,790,198.97.

According to the report, the life-saving crews are called upon to perform much service in the neighborhood of their stations which in no wise relates to their regular duties as salvors of life and property from shipwreck. For instance, during the year they rescued from the water 33 persons who had fallen from docks, vessels, etc., 22 bathers, 1 insane person, 2 would-be suicides, 3 persons endangered in the surf, and 2 who had broken through the ice. One person (a woman) was rescued from an attempted assault, one from a sewer, one from a breakwater, one lost in a blizzard, and 107 from flood (at Louisville, Ky.). Ten persons who were ill or who had sustained more or less serious injury were treated and cared for by the life-savers. Of these, one had broken a leg and 4 were suffering from gunshot wounds. Seventeen persons in urgent need of medical or surgical attention were conveyed to places where such attention could be secured. There were recovered from the water the bodies of 86 drowned persons, and the bodies of 13 persons who had come to their death from various causes were picked up on the beaches and elsewhere in the localities of the stations. The life-saving crews were also called upon to save considerable private property having no connection with shipping. They rendered effective service at 31 neighborhood fires; helped 3 automobiles out of serious difficulty; rescued several horse teams from dangerous situations; recovered 14 fish nets and, on one occasion, 100,000 feet of saw logs. In one instance they helped to take from a burning building 65 horses and 110 vehicles before the local fire brigade arrived on the scene.

CONTRACTS FOR NEW STATIONS.

Contracts were made during the year for the construction of a new life-saving station at Bethany Beach, Del., and at Garibaldi, Oreg., at the entrance of Tillamook Bay. The station at the first-named place has been completed and put in commission and that at the entrance of Tillamook Bay is approaching completion.

TITLES TO STATION SITES, ETC.

Title was secured to a site for a new station to be placed at Neah Bay, Wash., under act of Congress approved April 19, 1906. This station is designed for service in conjunction with a first-class ocean-going tug (to be built and operated by the Revenue-Cutter Service) in saving life and property along the Washington coast. The necessity for such protection was forcibly emphasized by the terrible disaster to the steamer *Valencia*, which vessel, it will be remembered, was wrecked and sunk near Cape Beale, off the coast of British Columbia, January 22, 1906, with appalling loss of life.

Three sites were selected during the year for stations at Isle of Shoals, New Hampshire; Green Hill (South Kingston), Rhode Island; and Cold Spring Inlet, New Jersey, respectively; and contract was let for building a station on Wood Island, Maine, in lieu of the old station at Jerrys Point, the station site at the last-named place having been restored to the War Department for military purposes.

To afford adequate protection to craft frequenting the new harbor at the south end of Jackson Park, Chicago, an advantageous site for a station building was secured at the harbor entrance. When completed this station will be manned by the life-saving crew heretofore quartered in the station building erected in 1893 upon the grounds

of the Columbian Exposition, and which is no longer a favorable base from which to afford speedy relief to water craft in distress.

The Santa Rosa life-saving station, situated on Santa Rosa Island, near Pensacola, Fla., was, on September 27, 1906, demolished by a hurricane, which also swept away all the life-saving equipments of the station except a single boat, in which the station crew and their families fortunately made their escape. Within the year contract was awarded for replacing this station by a new structure, to be located not far from the site of the former one.

USE OF POWER LIFEBOATS.

Within the year motive power was installed in several more of the large self-righting and self-bailing lifeboats of the Service, making the total number in operation at the end of the year 17. Numerous reports have been received from officers of the Service in the field, and from keepers of stations, commending them as a most important addition to the life-saving equipment. By their use 157 persons were landed during the year. The appropriation for the maintenance of the Service last year was increased over that of the year before with the view of adding to the number of these boats, and they are now being supplied as rapidly as possible to stations at which they can be advantageously used.

PENSIONS AND RETIREMENT.

The General Superintendent renews his appeal for the passage of a bill providing pensions and retirement for aged and disabled members of the Service, and urges such legislation not only as an act of justice to the life-saving crews but also as a matter of sound public policy.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, HOUSE OF REPRESENTATIVES, *Washington, D. C., Monday, February 17, 1908.*

The committee met at 10.30 o'clock a. m.

Present: Representatives Hepburn (chairman), Wanger, Mann, Lovering, Stevens, Esch, Townsend, Hubbard, Adamson, Richardson, Bartlett, and Russell.

Present also Hon. A. B. Capron, of Rhode Island; Hon. Beekman Winthrop, Assistant Secretary of the Treasury; S. I. Kimball, esq., General Superintendent of the Life-Saving Service, Treasury Department, and others.

The committee thereupon resumed consideration of the bill (H. R. 15945) "to increase the efficiency of the personnel of the Life-Saving Service of the United States."

STATEMENT OF HON. BEEKMAN WINTHROP—Continued.

Mr. WINTHROP. Mr. Chairman, you asked at the last meeting for a statement of the expense which the passage of this bill would entail.

Mr. ADAMSON. The additional cost?

Mr. WINTHROP. The additional cost. I have three statements prepared here, which I will distribute to the members of the committee, and which may explain generally the estimated additional cost. The first table is based on the cost if the bill is made retroactive, including all the keepers and surfmen in the Service at the present time. The second statement is not counting the service prior to January 1, 1903, which is the provision contained in the present bill. The first table will show approximately what the annual cost will be to the Service for twenty years—the annual increase after twenty years' time.

Mr. LOVERING. Twenty years dating from when?

Mr. WINTHROP. I mean to say, if the law is in force twenty years, the one which you propose now, the approximate additional cost will be in accordance with Table No. 1, which is based upon the estimated cost of this bill if made retroactive so as to cover the prior service.

Mr. MANN. That is, when the longevity pay provision has been running for twenty years?

Mr. WINTHROP. Yes; this is longevity pay running for twenty years, and counting all prior services. Of course it would change somewhat; there would be a number of deaths, a number of resignations, a number of dismissals, and new men would be coming in. But I think this can be taken as a fair estimate of the additional cost after twenty years or when the bill has been in operation for fifteen years.

The tables above referred to are as follows:

TABLE No. 1.—*Estimated pay of district superintendents, keepers, and surfmen for one year.*

[Present rates of pay (except No. 1 surfmen, who are increased \$5 per month) taken as a basic rate with 10 per cent increase for each 5 years' service up to 40 per cent (20 years).]

Period of service.	No. of men.	Rate of pay per month.	Total pay per month.	Annual salary.	Aggregate pay per annum.*
<i>District superintendents.</i>					
At \$2,000:					
Fourth 5 years.....	3			\$2,600	\$7,800.00
Over 20 years.....	7			2,800	19,600.00
At \$1,800, over 20 years.....	2			2,520	5,040.00
At \$1,700, fourth 5 years.....	1			2,210	2,210.00
Total.....					34,650.00
<i>Keepers.</i>					
First 5 years.....	1			900	900.00
Second 5 years.....	15			960	14,400.00
Third 5 years.....	28			1,080	30,240.00
Fourth 5 years.....	45			1,170	52,650.00
Over 20 years.....	176			1,260	221,760.00
Total.....					320,400.00
<i>No. 1 surfmen.</i>					
First 5 years.....	26	\$70.00	\$1,820.00		16,835.00
Second 5 years.....	58	77.00	4,466.00		41,310.50
Third 5 years.....	58	84.00	4,872.00		45,066.00
Fourth 5 years.....	65	91.00	5,915.00		54,713.75
Over 20 years.....	58	98.00	5,684.00		52,577.00
<i>Other surfmen.</i>					
First 5 years.....	897	65.00	58,305.00		539,321.25
Second 5 years.....	318	71.50	22,737.00		210,317.25
Third 5 years.....	174	78.00	13,572.00		125,541.00
Fourth 5 years.....	121	84.50	10,224.50		94,576.62
Over 20 years.....	123	91.00	11,193.00		103,535.25
Total.....					1,283,793.62
Same at present scale of pay.....					1,638,843.62
Increased cost.....					1,404,972.50
					233,871.12

* Average annual length of service of all surfmen, 9½ months.

TABLE NO. 2.—*Estimated pay of district superintendents, keepers, and surfmen for one year.*

[Present rates of pay (except No. 1 surfmen, who are increased \$5 per month) taken as a basic rate, with 10 per cent increase for each 5 years' service up to 40 per cent (20 years); service prior to January 1, 1903, not regarded.]

Period of service.	Number of men.	Rate of pay per month.	Total pay per month.	Annual salary.	Aggregate pay per annum. ^a
<i>District superintendents.</i>					
At \$2,000, over 5 years.....	10			\$2,200	\$22,000.00
At \$1,800, over 5 years.....	2			1,980	3,960.00
At \$1,700, over 5 years.....	1			1,870	1,870.00
					27,830.00
<i>Keepers.</i>					
Under 5 years.....	1			900	900.00
Over 5 years.....	264			990	261,360.00
					262,260.00
<i>No. 1 surfmen.</i>					
Under 5 years.....	26	\$70.00	\$1,820.00		16,835.00
Over 5 years.....	239	77.00	18,403.00		170,227.75
<i>Other surfmen.</i>					
Under 5 years.....	997	65.00	58,305.00		539,321.25
Over 5 years.....	736	71.50	52,624.00		486,772.00
					1,213,156.00
Total.....					1,503,246.00
Same at present scale of pay.....					1,404,972.50
Increased cost.....					98,273.50

^a Average annual length of service of all surfmen, 9½ months.

TABLE NO. 3.—*Estimated pay of district superintendents, keepers, and surfmen for one year.*

[Present rates of pay (except No. 1 surfmen, who are increased \$5 per month) taken as a basic rate, with 10 per cent increase for each 5 years' service up to 40 per cent (20 years); service prior to January 1, 1898, not regarded.]

Period of service.	Number of men.	Rate of pay per month.	Total pay per month.	Annual salary.	Aggregate pay per annum. ^a
<i>District superintendents.</i>					
At \$2,000, over 10 years.....	10			\$2,400	\$24,000.00
At \$1,800, over 10 years.....	2			2,160	4,320.00
At \$1,700, over 10 years.....	1			2,040	2,040.00
					30,360.00
<i>Keepers.</i>					
First 5 years.....	1			900	900.00
Second 5 years.....	15			990	14,850.00
Over 10 years.....	249			1,080	268,920.00
					284,670.00
<i>No. 1 surfmen.</i>					
First 5 years.....	26	\$70.00	\$1,820.00		16,835.00
Second 5 years.....	54	77.00	4,186.00		41,310.80
Over 10 years.....	181	84.00	15,204.00		140,637.00
<i>Other surfmen.</i>					
First 5 years.....	867	65.00	58,305.00		539,321.25
Second 5 years.....	318	71.50	22,737.00		210,317.25
Over 10 years.....	418	78.00	32,604.00		301,587.00
					1,250,008.00
Total.....					1,565,038.00
Same at present scale of pay.....					1,404,972.50
Increased cost.....					160,065.50

^a Average annual length of service of all surfmen, 9½ months.

Mr. MANN. Do you not think that the very purpose of this bill is to encourage men to remain in the Service?

Mr. WINTHROP. That is perfectly true, Mr. Mann. It would in a certain respect be increased by men remaining in the Service for a greater length of time. On the other hand, with the pension provision of the bill, and with the ability to get good men, we would not be apt to keep men who had been in the Service a long time, and whose efficiency has been somewhat impaired. We could pass them out, you know, and get new men in.

Mr. MANN. You have not taken the retired pay into consideration in this statement, have you? This only relates to longevity pay?

Mr. WINTHROP. This shows the increased cost, which would be \$233,000—that is, on longevity pay.

Mr. MANN. That has nothing to do with the retired list?

Mr. WINTHROP. There is no retirement in the bill; simply pensions, you see.

Mr. MANN. Whether you call it retirement or pension, it has nothing to do with that part of it?

Mr. WINTHROP. Nothing at all; no.

The CHAIRMAN. If you had this increase, if the increase was such as to add to the cost of the Service for pay \$233,000, would it be necessary to have the other feature of the pension?

Mr. WINTHROP. Yes; I think it would, because there a great number of men who are injured in the line of service, and it would be desirable to have them pensioned off.

The CHAIRMAN. What would you think, then, in view of that increase—that is a very large increase for this number of men—to limiting the pension to those who are harmed by accident, or to their families, in case of death, so as to eliminate the disability that comes from sickness?

Mr. WINTHROP. I should much prefer to have it include the disability incurred in line of duty. There are a number of men who are injured just as seriously from exposure as from accident, and it would be rather unfair to limit that alone to accidents.

The CHAIRMAN. This proposal of making the increase retroactive makes the pay of a surfman very large. It is a very unusual pay. If we were to eliminate the consideration of the occasional peril, it would be an extraordinary pay for that class of talent, would it not?

Mr. WINTHROP. I do not think so, Mr. Chairman. I think that you require a rather exceptional class of talent. You see, when a man enters at \$65 a month, after five years' service, that would bring his pay up to \$71.50, and after ten years of service it would bring it up to \$78, I believe. I do not regard that as a very great pay when you take into consideration the fact that these people have to reside at the station, have to pay the expenses of their mess bill, and probably support another home; then they have the expense of purchasing their uniform, and, in addition, it is a very perilous service.

The CHAIRMAN. Take a period of service of forty years, and average that. That gives a man thirty years at the highest pay—\$65—and 40 per cent of that for thirty years.

Mr. KIMBALL. Twenty years.

The CHAIRMAN. No; I beg your pardon; would it not be thirty years?

Mr. KIMBALL. It takes thirty years to get up to the 40 per cent.

The CHAIRMAN. I say, taking the average, it would be what I have stated for thirty years and \$65 for the other ten years. To my mind that is a very large pay for that kind of men.

Mr. WINTHROP. Would it not be twenty years, Mr. Chairman—a 20 per cent increase?

Mr. MANN. The average would be twenty years for the men receiving the highest pay; but they would be ten years at \$65, and the balance, thirty years, at the highest pay. That is what it amounts to.

Mr. KIMBALL. That would make the highest pay \$98.

The CHAIRMAN. For thirty years, and for ten years \$65. Now, that is a very high pay for that class of men.

Mr. MANN. Ninety-one dollars for the surfmen and \$98 for the No. 1 surfmen.

Mr. KIMBALL. It would be \$98 a month for twenty years.

The CHAIRMAN. That is, for the No. 1 men?

Mr. KIMBALL. For the No. 1 men.

The CHAIRMAN. I am speaking now of the lowest class of employment.

Mr. KIMBALL. It would be \$91 for them.

The CHAIRMAN. That is \$1,020?

Mr. MANN. But they do not get that all the year round, you know. What are they paid now?

Mr. WINTHROP. Sixty-five dollars a month for the actual time in service.

Mr. MANN. But what is the actual time in service?

Mr. WINTHROP. Ten months on the Atlantic coast, all the year on the Pacific, and approximately eight months on the Great Lakes. It is during the period of navigation of the Great Lakes, and that is approximately eight months.

Mr. MANN. Do you not think that is an unjust discrimination against the Great Lakes?

Mr. WINTHROP. That is the law. That is provided in the law.

Mr. MANN. But you are seeking now to amend the law. That is the reason I asked.

Mr. WINTHROP. If they were given the privilege of keeping open all the year round, or the Department were given the right to keep them open whenever necessary, then I think it would be fair. You see, on the Great Lakes, if I understand correctly, Mr. Mann—I have not been on the Great Lakes very much—the period of actual navigation is only about eight months, is it not?

Mr. MANN. Oh, I understand that part of it; but you are figuring on keeping them open for eight months.

Mr. WINTHROP. Do you mean that it is an unfair discrimination as far as the men are concerned?

Mr. MANN. It runs a little longer than that, probably, on part of the Lakes. But you are figuring now upon a permanent force. You figure at present largely upon a temporary force. The men will change more or less. Then you propose to give the men on the Atlantic coast and the Gulf coast ten times \$65 for a year's pay; and on the Lakes, which is a much harder service than it is on the Gulf, eight times \$65 a month?

Mr. WINTHROP. There would be no objection to such an amendment as you propose.

Mr. MANN. I was thinking of reducing the pay on the other coasts.

Mr. WINTHROP. You asked me also about the number of vacancies in the crews. I have here a statement showing the vacancies in the various districts on December 31, 1907. Would you like me to read it?

The CHAIRMAN. If you please.

Mr. WINTHROP. In district No. 1 there were 2 vacancies; in district No. 2, 8 vacancies; in district No. 3, 9 vacancies.

Mr. MANN. Can you not specify those districts so we will know where they are?

Mr. WANGER. I have a list of them.

Mr. MANN. I mean, as Mr. Winthrop gives them.

Mr. WINTHROP. If you will give me that—have you a list there?

Mr. MANN. I mean generally the location.

Mr. WINTHROP (after consulting Mr. Kimball). District No. 1 is composed of the States of Maine and New Hampshire; there are 2 vacancies there. No. 2, Massachusetts, 8 vacancies. No. 3, Rhode Island and Fishers Island, New York, 9 vacancies. No. 4, New York State and Long Island, 28 vacancies. No. 5, New York and New Jersey, 11 vacancies. In No. 6, which is in Delaware and Maryland and the eastern shore of Virginia, there are no vacancies.

In the seventh district, which is in Maryland and North Carolina, there is 1 vacancy. In the eighth district, which is the coast of South Carolina, Georgia, and Florida, there are 2 vacancies. In the ninth district, which is the coast bordering on the Gulf of Mexico, there are 9 vacancies. In the tenth district, which is the Great Lakes, Lake Ontario, and Lake Erie, there are 29 vacancies. In the eleventh district, the coast of Lake Huron and Lake Superior, there are 20 vacancies. In the twelfth district, Lake Michigan, there are 29 vacancies. In the thirteenth district, which is the coast of Washington, Oregon, California, and Alaska, there are 42 vacancies, making 190 vacancies in all.

Mr. TOWNSEND. What do you mean by "the Great Lakes," and then you classify them as "Lake Huron," "Lake Superior," and so on?

Mr. WINTHROP. I mean part of the Great Lakes; there are three districts on the Great Lakes.

Mr. MANN. The bulk of the vacancies are on the North Pacific, where the service is very arduous and where you keep open all the year around. Do you not keep open the year around there?

Mr. WINTHROP. Yes; on the Pacific coast we keep open all the year round.

Mr. MANN. And on the Great Lakes, where the service is also arduous, and where you only pay for eight months?

Mr. WINTHROP. Yes, that is it; and also in the two districts on the Atlantic coast, where there are the large number of vacancies—28 and 11, respectively.

The CHAIRMAN. Mr. Secretary, how many stations in the first district, in your judgment, might be dispensed with? Are there any?

Mr. WINTHROP. I do not think, Mr. Chairman, that there are any stations that could be safely dispensed with in any place. There are quite a number of stations which were authorized to be constructed which were not constructed. The authority was given

but it was not a positive direction to construct them, and the stations which were considered most necessary were constructed, and others were left without stations.

The CHAIRMAN. How many stations are there opposite which there was no wreck during the past year?

Mr. WINTHROP. In the first district, of 14 stations, there were 2; in the second district——

The CHAIRMAN. Two wrecks?

Mr. WINTHROP. Two stations.

The CHAIRMAN. Without wrecks?

Mr. WINTHROP. Without wrecks. In the second district, in which there are 32 stations, there were 7. There were 160 disasters in that district. In the third district of 9 stations, there were 2.

Mr. MANN. Two without wrecks?

Mr. WINTHROP. Two without wrecks. I am mentioning the ones which were without wrecks. In the fourth district, of 33 stations, there were 16.

Mr. MANN. Sixteen without wrecks?

Mr. WINTHROP. Sixteen without wrecks. There were 55 wrecks in that district. In the fifth district, with 42 stations, there were 12. In the Sixth district, out of 18 stations, there were 5. In the seventh district, out of 34 stations, there were 6, and 81 wrecks. In the eighth district, with 10 stations, there were 6 without wrecks. In the ninth district, out of 8 stations, there was 1 opposite which there was no wreck. In the tenth district, with 12 stations, there were none. In the eleventh district, out of 18 stations, there were 2. In the twelfth district, with 31 stations, there were none. In the thirteenth district, with 17 stations, there were 6.

Mr. LOVERING. That was during the last year?

Mr. WINTHROP. During the last year, the fiscal year ending June 30, 1907.

The CHAIRMAN. That aggregates probably 75 or 80 stations at which there was no wreck and where the men were not under any peril.

Mr. KIMBALL. But where there are apt to be wrecks next year.

Mr. WINTHROP. Of course they were not under any actual peril, I suppose, from going out to sea, because there were no wrecks. Of course they have to do perilous duty. The patrolling is perilous duty in stormy weather, and especially in the heavy blizzards of winter time it is very perilous duty.

Mr. MANN. At how many of these stations is there patrolling done?

Mr. WINTHROP. In every one of them.

Mr. MANN. No, no; I know better than that.

Mr. WINTHROP (to Mr. Kimball). Am I not correct?

Mr. KIMBALL. It is done at all of them where they are so located as to permit patrolling. They have patrol duty at all stations. There is a station at Louisville, on the river, where they do not patrol, owing to the nature of the place.

Mr. MANN. What do you mean by "patrolling?"

Mr. WINTHROP. Walking up and down a certain stretch of beach.

Mr. HUBBARD. Do they meet the men from the adjoining station?

Mr. WINTHROP. When they are near together they do. When they are not near together they have places where there is a key, and the

patrolman or the surfman has to go to that place to get the key to register upon the clock which he carries around his waist.

Mr. KIMBALL. There is patrolling done at every station, I think, except the one at Louisville.

Mr. WINTHROP. I think, Mr. Mann, there is a patrol at every station.

Mr. KIMBALL. They patrol at Chicago and at all the other stations.

The CHAIRMAN. Where the stations are within sight of one another, and where the whole line of coast is visible from one point to another, do they patrol there?

Mr. WINTHROP. Oh, yes; they patrol there. That is the place where the patrolmen meet the men from the other station.

The CHAIRMAN. What is the necessity for that kind of patrol?

Mr. WINTHROP. In the nighttime, during the heavy storms, you can not see the whole coast from the station. You have to wander up and down to warn off vessels as well as to go out to the wrecks. You see, a number of vessels were warned off last year. Of course we can not tell whether they would have been wrecked or not. It is merely a supposition.

Mr. KIMBALL. The patrol is one of the most important features of the Service.

Mr. WINTHROP. There were 247, I believe, that were warned off.

Mr. LOVERING. One hundred and seventy-four.

Mr. WINTHROP. Have you the last report there, or is not that the report for 1906? I think that is the report for the year before; is it not? I think there were 247, if my recollection is correct.

Mr. KIMBALL. It averages generally about 200.

Mr. LOVERING. That is for 1906.

Mr. WINTHROP. I think you asked something about the age of the keepers and surfmen at the last hearing.

The CHAIRMAN. Yes, sir.

Mr. WINTHROP. I have here a table about the age. The keepers and surfmen vary in age from 19 to 72 years. Of course the majority of them are between 23 and 48. There are some, however, from 72, 71, 70, all the way down.

The CHAIRMAN. How many are beyond 64?

Mr. WINTHROP. Beyond 64 and including 64?

The CHAIRMAN. Including 64.

Mr. WINTHROP. There are 25 keepers and 11 surfmen of 64 or over; that is, 36 in all. Above 57 there are 64 keepers and 65 surfmen; 129 altogether.

The CHAIRMAN. Should this retirement be voluntary, or should it be arbitrary, or should the Government have the power to retire at 64?

Mr. WINTHROP. The present bill does not fix the age. It simply authorizes retirement for physical incapacity or injury received in the line of service. You see, when a man is incapacitated he is examined by a board which reports as to whether he is worthy of a pension or not.

The CHAIRMAN. Should there be a provision in this bill giving you the power to discharge a man, or do you have that power now?

Mr. WINTHROP. Oh, we can discharge a man at any time. We have to do it, of course, Mr. Chairman. I should like very much to see a provision inserted in the bill giving the Government authority

to discharge a man and place him on the pension list voluntarily on the part of the Government—a compulsory retirement; but that was not in this bill. I say that because a man reaches a certain age at times where, although he might not be called physically incapacitated in the line of duty, yet he is not as efficient as a younger man; and it would be a satisfactory thing to be able to provide for him and also provide a place for a younger and more efficient man.

Mr. MANN. Do you think it would be possible, if your bill became a law, when a man reached an age where, by reason of his age, he was really incapacitated for this service, but was yet not subject to pension because disabled by disease or injury, to get rid of him?

Mr. WINTHROP. Oh, yes; we had, Mr. Mann, to get rid of several men for that very reason.

Mr. MANN. That is, under the existing law?

Mr. WINTHROP. Under the existing law.

Mr. MANN. When a man has served for many years, and has worked up until he is getting \$91 a month by reason of his long service, do you think that any one in the Government would have the heart to discharge him?

Mr. WINTHROP. Unfortunately, we have been obliged to have that heart in the past. We have been obliged to get rid of some men.

Mr. MANN. But you have not had that condition in the past.

Mr. WINTHROP. I do not think this bill would affect us seriously in that regard. In fact, Mr. Mann, I think it would be easier to get rid of a man under this bill when he is old and not efficient than it would under the laws at present; because under this bill it is assumed that with the additional pay he might be able to save something and we would not feel that we were casting him out either in the poorhouse or upon charity.

Mr. MANN. But if he proved to you that he would be cast out to the poorhouse or upon charity, do you think anybody would have the heart to discharge him if he remained in the service that long and worked up his pay to that point?

Mr. WINTHROP. There is undoubtedly always that difficulty—a difficulty which is not affected by the amount of pay or service. There is always that difficulty, and that is the reason why I favor a retirement pay for all these men.

Mr. MANN. Can you give us the rates that are fixed by section 4?

Mr. WINTHROP. Yes, sir; it is \$25, \$15, and \$10.

Mr. MANN. When you say “\$25, \$15, and \$10,” what do you mean?

Mr. WINTHROP. Twenty-five dollars for the lieutenant—

Mr. MANN. A lieutenant in the Navy gets a pension of \$25 for what?

Mr. WINTHROP. Twenty-five dollars a month.

Mr. MANN. For what?

Mr. WINTHROP. For disability; \$15 for the ensign, and \$10 for the surfman.

Mr. KIMBALL. That is what is called total disability.

Mr. MANN. Total disability?

Mr. WINTHROP. That is what they call total disability; yes.

Mr. MANN. Twenty-five dollars for a lieutenant in the Navy?

Mr. WINTHROP. And \$15 for an ensign.

Mr. MANN. Fifteen dollars for an ensign in the Navy, and \$10 for a warrant officer in the Navy?

Mr. WINTHROP. Ten dollars for the warrant officer; that corresponds to the surfman.

Mr. MANN. But you find that in the bill. What I want to get at is the fact in reference to the amount. Is the utmost pension that can be paid under this bill for full disability \$25 per month in case of a superintendent, \$15 in case of a keeper, and \$10 in case of a surfman?

Mr. WINTHROP. So I understand it.

Mr. MANN. Are you absolutely certain about that?

Mr. WINTHROP. Mr. Mann, as you understand, we can not say positively about that. I could telephone over to the Pension Office and find out, if you would like to know right away.

Mr. MANN. Are lieutenants in the Navy put on the pension list at all for total disability?

Mr. WINTHROP. I understand they are; yes.

Mr. MANN. They are put on the retired list; are they not? And are not all those naval officers put on the retired list at three-quarters pay for total disability incurred in the service?

Mr. KIMBALL. They can not have both at the same time?

Mr. MANN. They do not want both at the same time. I am trying to find out what the fact is.

Mr. WINTHROP. I understand they have the right to pension and the right to retirement.

Mr. TOWNSEND. I think the provision of the pension law is \$25 for officers, but they can not get that and go on the retired list both. I think that is true.

Mr. MANN. When there is a full disability, then they are retired. The list that you speak of applies to civil-war veterans. That is a different proposition.

Mr. STEVENS. Sometimes a man will be on the retired list and subject to the orders of the Secretary of the Navy, and they will want to pension him.

Mr. TOWNSEND. I think there is no doubt about that, Mr. Mann. The pension law provides for total disability \$25, as I suggested; but it does make provision for men who can get on the retired list to go there, and then they do not draw pensions. My understanding is that this bill—I have just looked it over—provides that the provisions of the naval pension law shall apply to these officers, making them correspond to naval officers in that respect; and I know that there is a provision in the naval pension law to that effect.

Mr. STEVENS. I think there is too.

Mr. MANN. Well, if there is anybody in the Navy that is getting a pension and is not on the retired list for total disability, you will have to prove it to me.

Mr. ESCH. I think it ought to be looked up and inserted in the record here.

Mr. WINTHROP. There are several people on it who are not entitled to retirement. Would there not be a number of people who would not be entitled to retirement—men who volunteered, for instance, during the civil war?

Mr. MANN. Oh, yes; that is what I supposed that applied to.

Mr. WINTHROP. Will you telephone over to the Pension Office and find that out [addressing Mr. Kimball]?

(The information requested was subsequently furnished to the stenographer, as follows: Pensions paid to naval officers are received

by such as leave the service and are not subject to retirement—that is, through resignation or otherwise—and who can afterwards prove that they incurred disability in the line of service; also to volunteer officers who served in the civil war, the Spanish war, etc. The regular officers, on the other hand, are retired.)

Mr. WANGER. Why would not the \$72 rate apply to surfmen as well as to a person who has served in the Army?

Mr. WINTHROP. What rate?

Mr. WANGER. The rate of \$72 a month.

Mr. TOWNSEND. That is the pension rate now for total disability incurred in the service under the old pension law, as we call it.

Mr. WANGER. Where the aid and assistance of other persons is required.

Mr. WINTHROP. I do not know whether it would apply here or not. I understood that this was a \$25, \$10, and \$15 rate. I did not inquire into those laws; I took it for granted that was the case.

Mr. WANGER. "The general pension laws" is a very comprehensive term.

Mr. WINTHROP. Yes.

Mr. MANN. What were the benefits allowed keepers and surfmen under the act of May 4, 1882.

Mr. WINTHROP. When a man is disabled in the service, he could under that law be paid a year's salary; and in very exceptional cases, where the Secretary of the Treasury approves of it, he can be continued on the roll for an additional year, or whatever part of it it may be—in other words, giving him a one year's and possibly another year's pay.

Mr. MANN. How would you enforce this provision? Suppose a man is disabled, and he asks for his year's pay under that statute, but makes no application at that time for a pension. He gets his pay. Is that going to prevent him afterwards from getting a pension when he makes an application for it?

Mr. WINTHROP. No; I presume not.

Mr. MANN. This bill says it would.

Mr. WINTHROP. Not at the same time.

Mr. TOWNSEND. For the same period.

Mr. HUBBARD. He would not be receiving both for the same period, would he?

Mr. WINTHROP. No; for the same period he would not.

Mr. MANN. Then this does not amount to anything; because in no case would anybody make an application for a pension who was entitled to full pay for his time.

Mr. TOWNSEND. But suppose the two years has elapsed—then would he not come in?

Mr. MANN. Yes.

Mr. TOWNSEND. That is the idea of that.

Mr. LOVERING. Could there be, under this bill, a period when a man could receive both a pension and other benefit?

Mr. WINTHROP. No. They could not receive a pension and any other benefit at the same time.

Mr. MANN. I doubt whether, under that provision, he could get a pension at all if he took the benefit of the act of May 4, 1882.

Mr. STEVENS. Mr. Secretary, would it not be better to confine any payments made under this bill to the Life-Saving Service than to

increase the pension roll? Would it not be better to make a sort of a retired list rather than a pension list?

Mr. WINTHROP. I should much prefer it—much prefer it. I think the Department would be perfectly willing to have either an arbitrary amount stated as retirement pay or an arbitrary amount stated as a pension, and leave it entirely in the hands of the Department and of the Public Health and Marine-Hospital Service surgeons to decide.

Mr. STEVENS. You realize that there is a very strong prejudice against a civil pension list?

Mr. WINTHROP. Perfectly.

Mr. STEVENS. And we do not want to increase the civil pension list.

Mr. WINTHROP. Certainly; but I feel that this is one of those cases where there is sufficient distinction between retiring these men on retired pay and retiring the ordinary civil employees.

Mr. STEVENS. Do you know of any other service in the Government, where, if a man is injured in the service, he does receive payment or a sort of a retired pay for a time?

Mr. WINTHROP. They receive retired pay permanently in the Revenue-Cutter Service.

Mr. STEVENS. I know they do; but outside of that?

Mr. ESCH. The railway mail clerks get a thousand dollars per year, I think, for injuries sustained there.

Mr. STEVENS. Yes; something of that kind.

Mr. WINTHROP. And then in another service in the Navy they have waiting orders. In other words, it is so that if a man is permanently disabled he is put upon waiting orders.

Mr. MANN. In what service is that?

Mr. WINTHROP. That is the Public Health and Marine-Hospital Service. Of course that is not a very hazardous duty, so it does not often occur.

Mr. MANN. That applies only to the surgeons?

Mr. WINTHROP. That applies only to the surgeons; yes.

Mr. ESCH. Mr. Secretary, do you think that we could keep up the personnel of the Service and get men whenever they were needed to maintain the efficiency of the Service if we simply provided the increases of pay in the first and second sections of the bill, and eliminated the whole pension feature?

Mr. WINTHROP. No; I think the pension feature is very important. In fact, as I said before, I think that would not do nearly as much good as if we had retired pay; but I understood that there was such a very strong opposition to retirement that it was decided not to press that at this time. The pension is a very essential part of the bill.

Mr. ESCH. It is the most important part, is it?

Mr. WINTHROP. No; I could hardly distinguish as to which was the most important. I should think the additional pay was probably more important than the pension, because the number of pensions would be very small. It would have more of a moral effect than a financial effect, of course. You know what I mean. If a man, when he goes in the Service, feels that if he is disabled or injured in the line of duty he will be taken care of, that will have a great

deal of effect in enticing men into the Service and making the Service attractive to young men, to men who are going into it. I think, in other words, that the moral effect will be more than the financial aid to the men.

Mr. MANN. Is not this the case, Mr. Secretary; that so far as the increase of the salary is concerned, that is purely a matter of getting men to come into the Service?

Mr. WINTHROP. Oh, that is, undoubtedly.

Mr. MANN. Probably that will be corrected at present by the hard times. The pension is for the purpose of getting service out of the men in time of great danger; is it not?

Mr. ESCH. And getting them to remain.

Mr. MANN. Well, not merely to remain in the Service; but when the surfboat is to go out, to have them a little more ready and willing to launch it in time of danger if they felt that they would be cared for in case of injury.

Mr. WINTHROP. It would increase the morale, undoubtedly.

Mr. MANN. Would it not be still more efficient if the men knew that in case they lost their lives the people dependent upon them would have some pension?

Mr. WINTHROP. Undoubtedly.

Mr. MANN. Is that in the bill?

Mr. WINTHROP. That is not in the bill.

Mr. MANN. Now, you are not very much short of men. You stated here the other day that you were short 500 men.

Mr. KIMBALL. That was a guess; it was a very poor guess.

Mr. MANN. It was an extremely poor guess. It only shows how we are all prone to exaggerate; for it turns out now that you are only short a few men on the Atlantic and Gulf coasts, you are not short a great many on the north Pacific, and not short a great many on the Lakes.

Mr. WINTHROP. We are short 190 all told.

Mr. MANN. All told—which at that season of the year was not a very great number.

Mr. KIMBALL. In November, it was 237.

Mr. MANN. And that shows how rapidly you are filling up the ranks under the financial stress. You probably will have a plethora of men next summer, even if you reduce the salary.

Mr. WINTHROP. Of course, Mr. Mann, it is not only a question of getting men who have passed the civil service requirements. It is also a question of getting good men.

Mr. MANN. I assumed that every man who passed the civil service examination was a good man.

Mr. WINTHROP. Well, then, I should say better men. We will assume that a man who has passed the civil service examination is a good man; but all men who pass the civil service examination are not equally good.

Mr. MANN. Well, men are much alike. You get the average run of men who go into that class of work. You do not get Harvard graduates; and if you did they would not be much better than the others, no matter what pay you might have.

Mr. WINTHROP. I agree with you thoroughly. They would not be as good. What you want to get is a man who has lived on the shore, who has been a fisherman, who knows the surf thoroughly, and who has the courage to go out in time of storm, in time of danger.

Mr. MANN. Is not the main thing to let the man know that when he has been at his station perhaps for a year with very little to do and an exigency comes along of the kind he is employed to wait for that if he goes and takes his life in his hands and puts it in the sea and loses it, his family will be protected, and that if he is permanently injured he will be taken care of?

Mr. WINTHROP. That is very important. It is also important to attract men to the service who will go out in the boat when the time comes. Now, I will not acknowledge that they sit and wait alone for service. They do service all the time, and difficult service. At times, in time of wreck, they have more difficult service than at other times; but every day and every week they are required to do service. The service of watch is rather difficult. It is far more difficult, for instance, than the duties of a policeman in a city.

Mr. MANN. What kind of service?

Mr. WINTHROP. Of patrolling the beach; of keeping watch. It is more difficult than the duty of a policeman in a city.

Mr. MANN. It is not as dangerous.

The CHAIRMAN. Have you ever had any instances where a crew has refused to go to a wreck?

Mr. WINTHROP. I do not know that we can say that they have absolutely refused. We have had one case recently where they decided that it would be more expedient to return to headquarters for the evening.

Mr. MANN. Oh, you had that case of great cowardice up on Lake Michigan. Did you not discharge the crew there?

Mr. TOWNSEND. It was near Holland.

Mr. WINTHROP. That is one of the cases, Mr. Kimball says.

Mr. MANN. You discharged that crew, did you not?

Mr. KIMBALL. Yes.

Mr. WINTHROP. This other case that I refer to occurred very recently; and we discharged the keeper at once, because he was the man that suggested returning to headquarters, and the crew appeared to follow him bravely.

The CHAIRMAN. Have you ever had instances where an individual surfman has refused to man the boat?

Mr. WINTHROP. Not that I know of.

Mr. KIMBALL. We had one case where two men refused.

Mr. WINTHROP. How long ago?

Mr. KIMBALL. Four or five years ago.

Mr. WINTHROP. That was four or five years ago, Mr. Kimball says. They had one case where two men refused.

Mr. KIMBALL. They were discharged on the spot.

Mr. MANN. Do you suppose it is possible for these men, when they determine whether they will launch the surfboat or not, to keep from thinking about what may happen to them and their families?

Mr. WINTHROP. It depends, I suppose, a great deal upon the men; I do not know. I presume that some men, when they get into danger, do not think of the future at all; they simply think of the present. Other men undoubtedly think of what may happen to them. It is a question of individuals. We can not form any general rule or make any general statement.

Mr. KIMBALL. Frequently when a crew is going to a wreck the men hand their watches out to bystanders, and leave messages as to the disposition of their property if they are drowned.

The CHAIRMAN. Have you in the service now any nonsinkable boats?

Mr. WINTHROP. Oh, yes; the lifeboats are self-bailing and self-righting. We have installed recently gasoline engines in a number of the lifeboats to assist in going to wrecks in storms. Those boats can be capsized and filled with water, and they will right and self-bail in a very short time. Those boats, I believe, will right and self-bail in fifteen seconds or so. The one I saw took a little longer than that.

Mr. KIMBALL. Twenty seconds is the longest.

Mr. WINTHROP. Mr. Kimball says that the longest is twenty seconds. I understood it was a little longer. The one I saw I thought took about a half a minute or three-quarters of a minute. But those boats, if capsized and filled with water, will right themselves and self-bail themselves in less than a minute. Twenty seconds, I believe, is the longest according to tests.

Mr. KIMBALL. There is no such thing as a noncapsizable boat.

Mr. WINTHROP. No; there is no such thing as a noncapsizable boat. All boats can capsize. The great object is, when they capsize, to bring them up again—to have them self-righting.

Mr. MANN. You stated a while ago that there were a lot of life-saving stations which had been authorized and not constructed. How were they authorized?

Mr. WINTHROP. They were authorized in various years from 1874 to 1907. Some are being constructed; others, for instance, the ones authorized in 1874, 1882, and 1886 will never be built unless the circumstances so change as to make them necessary.

You were asking (if I may go back to that matter for a moment) as to the number of surfmen and keepers that were separated from the service during the last five years on account of physical disability. During the last five years there were 158 men and 28 keepers separated from the service on account of physical disability from various causes.

Mr. HUBBARD. During five years?

Mr. WINTHROP. During five years.

Mr. STEVENS. Have you any other work in the Treasury Department that any of these men who are separated from the service by physical disability could profitably do?

Mr. WINTHROP. That is a rather difficult question to answer. Of course it depends a great deal upon their physical condition and upon other questions as to their ability. They might, of course, be capable of doing certain work in the Treasury Department, and yet be absolutely incapable of doing surfmen's duty. They might be able to do clerical work, for instance.

The CHAIRMAN. Of the number of men you have spoken of that would be separated from the service, how many would be pensionable under this act?

Mr. WINTHROP. I should not presume to answer that question, Mr. Chairman. That would depend entirely upon the board that examined them. It would be a pure guess on my part, and the guess of a layman and not of a physician. I have all the causes. I can give them to the stenographer, if you wish it.

(The table showing the causes of separation from the service above referred to will be found at the end of Mr. Winthrop's statement.)

Mr. STEVENS. Have you any information about how many of them have families?

Mr. KIMBALL. About 80 per cent.

Mr. WINTHROP. Mr. Kimball states that about 80 per cent have families.

Mr. KIMBALL. We made an inquiry not long ago in that regard, and we found that 80 per cent of the men have families.

The CHAIRMAN. When a crew mans a lifeboat to go to a wreck in a stormy sea, do the men wear any life-saving apparatus?

Mr. WINTHROP. They wear the cork jacket, always.

The CHAIRMAN. Are they provided with those jackets?

Mr. WINTHROP. Yes; those are provided by the stations.

The CHAIRMAN. Can a man sink in the waves if he wears one of those jackets?

Mr. KIMBALL. No, sir.

Mr. WINTHROP. I presume he can not; but he can be killed, of course, or drowned without sinking. In heavy storms, I mean, the waves can dash over him and have the same effect as if he was submerged; and he can also be dashed against wreckage, and so on.

Mr. STEVENS. The men can be frozen to death; can they not?

Mr. WINTHROP. Yes. Of course that is one of the very great dangers in going to wrecks in the winter time—freezing to death.

The CHAIRMAN. And it is not possible to make any provision against that?

Mr. WINTHROP. There is no possibility of making any provision at all against that, so as to keep them from freezing to death. Every week wrecks occur when men are brought from the wrecks by the breeches buoy or by the lifeboat or by the surfboat. On Saturday for instance, a report was in the paper of two such cases, and on Sunday another one that I heard of.

Mr. RICHARDSON. I remember reading of a case where a great number of bales of cotton were saved by the Life-Saving Service men.

Mr. WINTHROP. Oh, they do all that work, too. They do a great deal of work.

Mr. RICHARDSON. They saved 5,000 bales of cotton, and they were paid \$5 apiece.

Mr. ESCH. That was in Nova Scotia.

Mr. WINTHROP. I do not know about that, because we do not allow them to take money.

Mr. RICHARDSON. That was last Saturday.

Mr. ESCH. That was in Nova Scotia, Judge.

Mr. RICHARDSON. They got \$5 a bale—

Mr. KIMBALL. Yes; it was in Nova Scotia.

Mr. WINTHROP. Those would not be our men, you see. We do not allow our men to take money. Of course the life-saving men do a great deal of work aside from their regular duties. They save people in runaways; they save horses that back into the water; they perform all that sort of incidental duties that occur around near the station. Those things are not, really, a part of their official duties; but it is rather interesting to see the kind of work they can do.

Mr. LOVERING. That is not any more than any citizen would do, of course.

Mr. WINTHROP. No; it is just the same as any citizen would do.

The CHAIRMAN. Is there any law under which men who perform extraordinarily daring feats of courage may be rewarded, by medal or otherwise?

Mr. WINTHROP. Yes; there is a law which authorizes the granting of a gold or silver medal to those who perform remarkable deeds of heroism in the saving of life.

The CHAIRMAN. How many of those medals have been granted during the past five years?

Mr. KIMBALL. To life-saving men?

The CHAIRMAN. Yes, sir.

(The information asked for was furnished later.)

List of members of United States Life-Saving Service to whom medals have been awarded by the Treasury Department from January 1, 1903, to December 31, 1907.

GOLD MEDALS.

Charlotte station, January 3, 1903:

George N. Gray, keeper.
Ira S. Palmer, surfman.
Lester D. Seymour, surfman.
Mial E. Eggleston, surfman.
Delbert Rose, surfman.
Charles Eastwood, surfman.
W. Vernon Downing, surfman.
Frank B. Chapman, surfman.
George E. Henderson, surfman.

Ship Bottom station, January 15, 1904:

Isaac W. Truex, keeper.
C. V. Conklin, surfman.
James H. Cranmer, surfman.
J. Horace Cranmer, surfman.
Barton P. Pharo, surfman.
Walter Pharo, surfman.
A. B. Salmons, surfman.

Long Beach station, January 15, 1904:

George Mathis, keeper.
M. D. Kelly, surfman.
W. E. Pharo, surfman.

Virginia Beach station, January 15, 1904:

W. N. Capps, surfman.

Squan Beach station, March 12, 1904:

Robert F. Longstreet, keeper.

Blue Point station, March 12, 1904:

Albert Latham, surfman.

Frank B. Raynor, surfman.

Quogue station, March 12, 1904:

W. F. Halsey, jr., surfman.

Frank D. Warner, surfman.

Cape Lookout station, April 12, 1905:

William H. Gaskill, keeper.

Kilby Guthrie, surfman.

Walter M. Yeomans, surfman.

Tyre Moore, surfman.

John A. Guthrie, surfman.

James W. Fulcher, surfman.

John E. Kirkman, surfman.

Calupt T. Jarvis, surfman.

Mr. RICHARDSON. Is it not a fact, Mr. Chairman, that the President is allowed to offer certain medals to men who perform unusually daring acts in any service in life?

Mr. WINTHROP. Yes; we have the right to grant medals to any person, whether he is in the Government service or not, who saves life at sea or in the navigable waters of the United States under hazardous circumstances.

Mr. RICHARDSON. I know that I have an application in now to grant a medal to a man that saved a child in front of a moving train, and I believe he ought to have it.

The CHAIRMAN. I am asking you with regard to this particular service—whether there is anything special to this service.

Mr. WINTHROP. No; that is not special to this service. That is simply a general provision.

Mr. LOVERING. The chairman asked you how many of those there were.

Mr. WINTHROP. I am looking that up now. (After examining papers:) There were thirty-three in the last five years; that is, I would not say that was accurate; but that is what I make it from counting them up hastily. There are at least thirty-three.

Mr. RICHARDSON. That is done by the officers making certificates as to the special acts of courage and bravery upon the part of the men, and sending them to the President?

Mr. WINTHROP. No; we have to have a certificate and a full statement; and this evidence is submitted to a board; which examines it very carefully, and then recommends to the Secretary of the Treasury the award of either a gold or a silver medal, if they think that the services are worthy of that reward.

Mr. RICHARDSON. It is inquired into by a board?

Mr. WINTHROP. It is inquired into by a board.

Mr. RICHARDSON. A board constituted for that purpose?

Mr. WINTHROP. A board constituted for that purpose. That is in the Treasury Department.

Mr. ESCH. Mr. Secretary, it was stated that 80 per cent of the men have families. Many times these stations are far removed from the centers of population or purchasing points, are they not?

Mr. WINTHROP. Yes.

Mr. ESCH. Do those men, in buying supplies for their families, get any rebate? Is there any commissary store, or anything of that kind?

Mr. WINTHROP. No; none whatever.

Mr. ESCH. They are put on the same basis——

Mr. WINTHROP. They are on exactly the same basis as any other employees of the Government.

Mr. ADAMSON. Mr. Secretary, there must be some good reason why this service has grown up apart from the Navy. Can you tell me why it is that it was not made part of the Navy, so that the men would be pensionable?

Mr. WINTHROP. It was originally, I believe, part of the Revenue-Cutter Service. It originated in the Revenue-Cutter Service, and it gradually increased in importance, and grew. There was a movement at one time to put it under the Navy; and there were a number of hearings, and the matter was very thoroughly thrashed out in Congress.

Mr. RICHARDSON. Was not that done before this committee?

Mr. WINTHROP. That was a number of years ago. In 1878, I believe; and it was determined at that time not to give it to the Navy.

Mr. ADAMSON. What was the reason?

Mr. WINTHROP. I will have to ask Mr. Kimball about that, because I was not here at that time. How was that, Mr. Kimball?

Mr. KIMBALL. In the first place, every keeper of a life-saving station is an inspector of customs; and he sees to the enforcement of the customs laws on all wrecks of foreign vessels. That was one reason. Another was that the business of a surfman is entirely distinct from that of a sailor. A sailor's business is to get on board a vessel at a wharf and stay on board until he gets to another one, and keep as far away from the surf as possible. Surfmen are men whose duties are performed on the shore and a few hundred yards beyond the shore.

Mr. ESCH. They are amphibias, are they?

Mr. WINTHROP. They are amphibias; yes, sir.

Mr. ADAMSON. I am just trying to get them into a category where they would be pensionable.

Mr. RICHARDSON. The function of the Navy is to destroy life, and you try to save it.

Mr. WINTHROP. Yes; my friend here suggests that there is another distinction—that the Navy people try to destroy life, and we try to save it.

Mr. RICHARDSON. They ought to be on the other side, then.

Mr. WINTHROP. Mr. Chairman, I have here a statement of some recent important shipwrecks. I do not know whether you would care to see it or hear it read.

(The paper above referred to was ordered to be made part of the hearings; and the same is as follows:)

SOME RECENT IMPORTANT SHIPWRECKS.

November 7, 1907.—Steamer *Wicomico*, 141 tons, stranded in Assateague Harbor, Virginia, one-half mile offshore. Twenty-eight persons landed in surfboat and small boat.

December 4, 1907.—Schooner *Rebecca Shepherd*, 411 tons, stranded on Pollock Rip Blue, coast of Massachusetts, 4½ miles offshore. Seven persons landed in power boat.

December 14, 1907.—Bark *Edmund Plinney*, 751 tons, stranded near Sandy Hook, N. J. Ten persons rescued in breeches buoy.

December 14, 1907.—Steamer *Hercules*, 955 tons, wrecked on Old Reef Point, coast of Rhode Island, 2 miles offshore. Ten persons saved.

January 8, 1908.—Schooner *Leonora*, 458 tons, wrecked on Cape Hatteras, three-fourths mile offshore. Two lives saved in surfboat; five lives lost.

January 28, 1908.—British Schooner *Perry C.* 332 tons, wrecked on southwest side of Little Duck Island, Maine. Six persons saved.

January 30, 1908.—Brigantine *Frederica Schepp*, wrecked on Massachusetts coast. Nine lives saved in surfboat.

February 1, 1908.—British bark *Puritan* went ashore on south side of Long Island. Eighteen persons saved.

Mr. WINTHROP. Last year the surfboat was used 997 times in making over 1,300 trips. The self-righting and self-bailing lifeboats were used 57 times, making 75 trips. The power lifeboat was used 132 times, making 157 trips. The breeches buoy was used 12 times, making 212 trips; and the wreck gun was used 17 times, firing 37 shots.

The CHAIRMAN. How many persons were brought ashore by the breeches buoy?

Mr. WINTHROP. There were landed by the surfboats—shall I give all the different means? There were landed by the surfboats 1,147 persons; by the lifeboats, 89 persons; by the power lifeboats, 145 persons; by the power launches, 176 persons; by the river life skiffs, 83 persons; by the breeches buoy, 198 persons; and by other station boats, 518 persons. There were also rescued 73 persons——

The CHAIRMAN. What is the grand total of all those rescues?

Mr. WINTHROP. The grand total is 2,429 lives.

The CHAIRMAN. May it be fairly said that all of those persons that were brought ashore by these various means were in imminent peril of death?

Mr. WINTHROP. Yes.

The CHAIRMAN. That is a fair statement?

Mr. WINTHROP. I think that is a fair statement.

The CHAIRMAN. And all of these persons may fairly be called rescued from death?

Mr. WINTHROP. Undoubtedly they can be called rescued from death. Of course it is impossible to state whether they would have all been drowned or have been killed had the stations not been there; but they were rescued from danger of death.

The CHAIRMAN. The peril was so great, however, that there was no other apparent means for their rescue excepting this that was adopted?

Mr. WINTHROP. I would not go as far as that. There are cases of course, where we have gone out and taken people off ships when there were other vessels near, and they could have been rescued by the other vessels. There are times when we have taken them off ships when they possibly could have made the harbor or could have been saved otherwise.

Mr. KIMBALL. They have been taken off at night when, if they had stayed on board, they would have all been saved; but we did not know that at the time.

Mr. WINTHROP. And Mr. Kimball says that sometimes they were taken off when they could have been saved otherwise, as we know by subsequent events.

The CHAIRMAN. That is, subsequently you knew it.

Mr. WINTHROP. Subsequently we knew it. So it is impossible to state how many would have been actually drowned and how many lives were actually saved. It would be an estimate, which would vary according to the person making the estimate.

Mr. LOVERING. As a rule, do the people whom you rescue help themselves much? Do they show any bravery, or are they hysterical and panic-stricken?

Mr. WINTHROP. Oh, yes; some show great bravery, and in the case of others of course we have to depend entirely upon the efforts of the surfmen.

Mr. LOVERING. In the case of the accident off Monomoy Point, you remember—

Mr. WINTHROP. In the Monomoy Point wreck, I remember, there was great bravery shown.

Mr. LOVERING. I thought that there was not. I thought that the men ran up and down the boats and upset the boats.

Mr. KIMBALL. Mr. Winthrop is thinking of a case that occurred recently at Monomoy. You are speaking of the one of five or six years ago.

Mr. LOVERING. Yes.

Mr. KIMBALL. There they were panic-stricken, and they were the cause of the loss of the life of our crew and their own lives, too.

Mr. WINTHROP. The last case I was thinking of was one that occurred a month or six weeks ago off Monomoy Point, where the crew behaved very bravely, and the wife of the captain of the crew also behaved with great bravery. So apparently bravery is not necessarily the same according to the place where they are wrecked.

Mr. LOVERING. It is a peril to have to contend with hysteria.

Mr. WINTHROP. Oh, yes; of course it is. Take, for instance, the *Bourgogne* when she sank in 1898—undoubtedly the panic at that time caused a great many deaths that might have been avoided.

The CHAIRMAN. Is there anything further, Mr. Secretary?

Mr. WINTHROP. I have nothing further, I think, Mr. Chairman, unless you want to hear the number of separations from the Service from various causes in the last five years.

The CHAIRMAN. You can just file that, if you please. There are some other gentlemen here who want to be heard and whom we would like to hear upon the subject generally.

(The paper last above referred to is as follows:)

Fiscal year.	Discharged, own request—		Physical disability.	Dismissed for cause.	Expiration of term of enlistment.	Died.	Deserted.	Total.
	To engage in other business.	For reasons other than to engage in other business.						
1903.....	123	13	36	30	79	8	11	300
1904.....	74	20	15	37	89	4	9	248
1905.....	175	13	15	50	70	2	7	332
1906.....	100	16	44	45	99	5	8	317
1907.....	130	16	48	45	85	3	14	341
Total.....	602	78	158	207	422	22	49	1,538
From July 1 to Dec. 31, 1907...	53	13	18	27	52	0	4	167

PENSIONS TO POLICEMEN AND FIREMEN.

From statistics published by the Bureau of the Census it appears that there was paid by the fifteen largest cities of the United States, during 1905, as pensions and gratuities, a total of \$3,364,112. The following table shows the amounts paid as pensions by the cities of New York, Chicago, Philadelphia, and Boston during the year named:

Police department pensions:

New York.....	\$1,302,309
Chicago.....	264,101
Philadelphia.....	132,937
Boston.....	138,065

Fire department pensions:

New York.....	581,548
Chicago.....	128,971
Philadelphia.....	68,917
Boston.....	83,833

NEW YORK CITY.

Police.—The report of the police department of the city of New York, for the year ending December 31, 1905, shows that the receipts of the police department pension fund amounted to \$1,273,021; \$193,946 of this fund were appropriated by the city of New York, while a large part of the balance was derived from license fees, permits, excise moneys, deductions for absence from duty, etc. During 1905, \$1,302,309 were paid to officers, widows, and children. The report shows a deficit of receipts to disbursement of \$51,314. On December 31, 1905, there were 2,672 beneficiaries of the fund. From the police department fund, a superannuated officer is allowed not more than one-half, nor less than one-fourth of his rate of compensation; the same amount is paid him in case of permanent disability. A widow of a member of the force who is killed in the performance of his duty, receives a sum not exceeding \$300; if there be children under 18 years of age, the amount is divided between the widow and such children, or in case he leave no widow, the sum is divided between the children until they shall attain the age of 18 years.

Firemen.—The New York City fire department pension fund receipts, as shown by the annual report of the department for 1905, amounted to \$606,039, of which the sum of \$604,195 was derived from certain licenses, the proceeds of sale of condemned property of the department, penalties, etc. During 1905, \$581,547 were paid out to widows and orphans and to retired men; 1,027 persons received benefits from the fire department pension fund. In case a member of the department is killed in the performance of duty, or dies from injuries so received, the widow of such member may receive a pension to an amount not exceeding one-half of his compensation. The provision with regard to children under 18 years of age is like that of the police pension fund, and, besides, includes dependent parents to the extent of one-half of the member's salary,

etc. The provisions for officers and members of the fire department, in case of partial or permanent disability incurred in line of duty, are liberal. In case of permanent disability incurred in line of duty, a member of the department may receive an annual pension equal to one-half of the annual salary of such member at the date of his retirement, and in case of permanent disability which does not disqualify him from service, he may be employed at the same salary in some position in the department not requiring active service as a fireman.

ILLINOIS.

By act of the legislature of Illinois of May 13, 1887, amended March 28, 1889, all cities and towns having a population of 50,000 or more are required to establish pension funds for the servants of the people who defend their lives and protect their property. The act specifies the method in which the funds shall be raised. Under the statutes of Illinois, a member of the fire department who shall be found to be physically or mentally permanently disabled by reason of service in such department, shall be retired on a monthly sum equal to one-half of his monthly compensation. In case of death in the performance of duty, or as a result of injury so received, etc., the widow shall receive, while unmarried \$30 per month, and the guardian of each child under 16 years of age, \$6 per month for each until it or they shall reach the age of 16 years, etc. Any fireman, after becoming 50 years of age, and having served twenty-two years or more, may be discharged or retired and paid a pension equal to one-half his full pay. The provision for members of the police departments are similar. After a service of twenty years, if the member be 50 years of age, he may be retired upon one-half his monthly pay. In case of disability incurred in line of duty, he may be retired on half pay of the rank which he held for one year next preceding retirement. When a member of the force loses his life in the performance of duty or as a result of injuries so received, his widow shall be paid one-half of the amount of his annual salary during her life, or, if there be no widow, the children, until they reach the age of 16 years, etc. As indicated above, pensions amounting to \$393,071 were paid members of the police force of Chicago.

PHILADELPHIA.

Police.—The report of the city of Philadelphia police pension fund association for 1905 shows that \$132,937 were paid as pensions to police of that city during 1905. There were, at the close of that year, 285 pensioners, including members, widows, children, a father, and a mother. In 1905 the city councils appropriated \$25,000 to this fund.

Firemen.—The secretary of the firemen's pension fund of Philadelphia reports that \$73,071 were paid from the firemen's pension fund during 1905. His report shows that the city of Philadelphia contributed \$10,000 to the fund, and that an appropriation of \$37,783 was made by the State of Pennsylvania.

MASSACHUSETTS.

Section 1 of chapter 377, Acts and Resolves of Massachusetts, 1901, provides for the retirement of members of the police department, under prescribed conditions, who shall receive annually one-half the compensation received at the time of retirement, and by section 2 cities and towns are authorized to appropriate money to provide payment thereof. Under act of 1887 provision is made in case of death of any member of the police force from injuries received, etc.; that the widow, or, if there be none, the children under 16 years of age, shall receive a sum not to exceed \$300 as an annuity, etc.

BOSTON.

Fire department.—The board of fire commissioners of Boston are empowered to retire from office in the fire department any member thereof who has become disabled in the performance of duty, or any member who has performed faithful service in the department for a period of not less than fifteen consecutive years, and shall in such case place the member so retired upon the pension roll. In the event of total disability the amount of annual pension shall be two-thirds of the annual compensation of the grade in which such members served. Members of the force who have served fifteen years shall be retired with a pension of one-half the annual compensation of the office from which said members are retired, etc. In case of the death of any member of the fire department from injuries received in discharge of duty, his widow, or, if no widow, any child

or children under 16 years of age, may be paid a sum not exceeding \$300 annually, to be paid until such widow shall remarry, or until such child or children shall attain the age of 16 years.

Police.—The Annual Report of the Board of Police of the City of Boston for 1905 shows that there were 206 persons on the police pension roll of that city at the end of 1905, and that \$129,687 were paid out of the police fund during that year.

The report of the city auditor of Boston for the year ending January 31, 1907, shows that the sum of \$76,096 was paid to pensioners from the fire department pension fund. His report shows that a total of \$212,530 was paid pensioners from the pension funds of the fire and police departments of that city.

DISTRICT OF COLUMBIA.

By act of Congress of February 25, 1885, it is provided that the District of Columbia shall deduct \$1 each month from the pay of each policeman and of each fireman, to be added to and form a part of the police fund and firemen's relief fund, respectively, to be used for the relief of disabled firemen and policemen, and of the widows and children of such as may die; the maximum relief in any one case not to exceed \$50 per month. By section 4 of the act approved February 28, 1901, the District Commissioners are authorized and directed to deposit out of receipts from fines in the police court, and receipts from dog licenses, a sufficient amount to meet any deficiency in the policemen's fund or the firemen's fund, the District Commissioners determining the amount to be paid the beneficiaries under these laws upon the recommendation of a board of three commissioned officers constituted by the head of the police department and the fire department, respectively.

BALTIMORE.

The Annual Report of the Board of Fire Commissioners of the City of Baltimore for the year ending December 31, 1905, shows that during said year the sum of \$12,162 was paid to pensioners from the money appropriated for that purpose. The report indicates that the fund is appropriated by the city of Baltimore. During 1905 there were 29 retired men on the pension roll of Baltimore, receiving pensions at the rate of from \$400 to \$500 each. During 1905 \$82,592 were paid retired officers, policemen, and clerks, in the police department of Baltimore, and \$2,340 to widows and orphans of officers killed in service, out of a fund of \$108,351. This fund was derived from fines and costs imposed by station-house magistrates, from fees for liquor permits, etc., and from appropriations made by the city amounting to \$35,202.

BUFFALO.

The receipts of the firemen's relief and pension fund for the benefit of members of the Buffalo fire department, during the year ending June 30, 1906, amounted to \$33,407, out of which \$25,991 were paid as pensions. Three per cent of the State liquor tax, and fees for licenses, etc., were made a part of the relief and pension fund. On December 30, 1905, there were 71 beneficiaries upon the roll of the police pension fund of Buffalo.

EXTRACT FROM THE REPORT OF THE CITY OF PHILADELPHIA POLICE PENSION FUND ASSOCIATION FOR THE YEAR ENDING DECEMBER 31, 1905.

The average life of a pension has to date been as follows: Members, three years and six days; widows, four years, eight months, and sixteen days; children, seven years, five months, and three days; mothers, three years, four months, and sixteen days.

Mr. Powers, chief statistician, division of agriculture, Bureau of the Census, says that it is provided in more than half of the States of the United States that the entire proceeds of a tax of 2 per cent, or thereabouts, based upon the premiums earned by foreign insurance companies doing business in those States, shall be appropriated for the benefits of the firemen of the towns and cities where such premiums are collected.

STATEMENT OF HON. A. B. CAPRON, REPRESENTATIVE FROM RHODE ISLAND.

Mr. CAPRON. Mr. Chairman and gentlemen of the committee, I really have not so very much to say, beyond the fact that I am especially and very greatly interested in the matter of the preservation of the Life-Saving Service. I believe, from what I have known of it—which is a matter of personal knowledge along our coast—that it is in very great peril of being reduced in its quality to a point where it would cease to be of real value, because just in the proportion that we introduce men who happen to come along and want a job, and who come from the farm or from anywhere else, except men who by training or previous labor are in some degree fitted for this service, they will be almost worse than useless until they have had the requisite amount of training.

Mr. STEVENS. Have you any objection to a question?

Mr. CAPRON. I should be very glad to answer any questions that may be asked.

Mr. STEVENS. You think it quite necessary that these gentlemen should pass a high degree of civil-service examination, I take it?

Mr. CAPRON. A civil-service examination to the extent of their ability to know intelligently the use of the wig-wag signal, the use of the Coston signal, and so on. But I do not think, Mr. Stevens, that a knowledge of conic sections or Latin or Greek would be very necessary. I should think we would like to have men who can read and write.

Mr. ADAMSON. Do you know why it is that in the civil service they always examine applicants on everything they are not going to need in the branch of work they apply for?

Mr. CAPRON. I can not tell why it is; I only know that it is true. [Laughter.]

Mr. WANGER. Do you know whether that is true in regard to the examination of surfmen?

Mr. CAPRON. Well, sir, I happened to be present at a life-saving station when a man had recently been brought in, and what happened was in this wise: There was a vacancy. They had a man who had been one of the best surfmen, one of the men who would have come up to have been a keeper—that is, a keeper in the sense of a captain of the company; but he could do better. These men mostly can do better at certain seasons of the year, and under conditions when the coastwise traffic demands that kind of men, because there are men wanted as mates of schooners, coastwise schooners or vessels, and they are the sort of men who from their very training are brave and capable, and who know the sea and know the coast. This man was brought in. He had to go through the whole process of getting an examination; but meanwhile, by direct permission from the Civil Service Commission, he could temporarily be assigned to duty, and went on duty there. I looked him over, and I said: "I could examine you in about three minutes, my friend;" because he was a strapping fellow, a man that had all the requisite qualities, the determination in his face, and all the appearances of a good man. And you and I, Mr. Chairman—who have been where good men were at a premium and bad men were only a handicap and a discount—we know really well what the demands of any service are where men's lives are in danger; and we could tell these boys like Mr. Lovering a whole lot about that. And I felt that that was the condition of things there.

Then they invited me—and this may not be uninteresting, it may not fail to apply our minds to the exact problem—to take a summer morning excursion, when the sun was glistening on the tops of the waves, out in the surfboat; and as a matter of ornament, I suppose, purely, they strapped one of these big cork life belts about my waist. It was becoming to me under those circumstances, and I was placed in the middle of the boat. I did not think the boat would ever get out over the bar at all, because there had been a storm the day before; and while these gentlemen seemed to be enjoying it as a matter of morning recreation or after-breakfast exercise, that boat stood up endwise, and I was quite sure it would go over backwards; and I was glad it was self-bailing. [Laughter.] Then it would pitch down the other side of the wave, and I drew my breath and felt of the life-preserver and wondered whether my feet or my head would come up first. My mouth was full of water; and this was just a pleasant midsummer morning excursion, with the sun shining brightly. [Laughter.]

MR. ADAMSON. Was that the first time your mouth was full of water? [Laughter.]

MR. CAPRON. I do not know, sir; I stayed two weeks in your State once. [Laughter.]

MR. RICHARDSON. You never repeated that experience?

MR. CAPRON. No; then I tried to imagine what it must be on some winter night, with the thermometer ten or twenty degrees below zero. Right off there were the very rocks or ledges, extending for miles, on which ship after ship, steamer after steamer, tow after tow, had come ashore. The whole coast there was strewn with the bones of those wrecks. You could not go a quarter of a mile without seeing some portion of a wreck, half buried in the sand. And I tried to think of what it would be on some cold winter night. Like the men who belong to our fire companies in the cities, we would a great deal rather that those men would not have a job once a year. I presume that is the way with fire. And yet we do like to feel that our fire companies are efficient when the time comes, if it comes once a year, or if it comes once in twenty years. We hope it will not come as often as that; but sometimes it comes every night. Sometimes, as has been the case lately along the coast, stretching from the State of Maine away along to Cape Hatteras, it has happened almost daily. You can hardly take up a newspaper without seeing an account very much like the one I saw in yesterday morning's Post. Let me read from the headlines of this, if it will not take too much time: The heading is:

Line shot to sailors—Breeches buoy saved eight from ship's rigging—*Howard B. Peck* swept on Long Island Bar after battling waves from Wilmington, N. C.—Life savers reach crew just in time—Sailors from the *Rhoda* also taken off.

There are two in one night, on the coast of that small strip of the State of New York called Long Island. I do not know the statistics at all; I only know that I read the home newspapers day by day, and I have a great many friends in the maritime service and the coastwise service there. One of the greatest maritime traffics in the country, you know, comes out of Narragansett Bay and Mount Hope Bay from Fall River—that tremendous half-rail, half-water traffic that comes down from Boston and the East to New York by that cheaper method. All that has got to go along the coast past

Point Judith, along outside of Block Island and down past Fishers Island to get inside of Long Island Sound.

I do find upon coming in close contact with those men that what we need is good men; that the moment we get one of the best and get him trained somebody else finds that he is one of the best. He has enlisted for a year, and at the end of a year he goes out to do better. We have got to have those good men, and we have got to keep them, so that they will not be going away and vanishing all the time and poorer ones coming in their place; and we have got to pay them better, or else we can not keep them. You pay the men twelve months in the year in your fire departments in the cities, for instance, more than these men are asking—\$65 a month eight months in the year—with a family, not out within a quarter of a mile (because they can not live there), but back somewhere, 8 or 10 miles off, in some village farther up the coast. They can not live nearer. They can not get home but once or twice or three times during the winter season, and they have got to keep two establishments. Eighty per cent of them have families. Eighty per cent of them, I reckon, are thinking about those families when the night comes and they are facing it.

In regard to the breeches buoy, by which the crews of two vessels were taken off in one night in one little locality in Long Island, as this paper says—I wonder if any of us ever saw a breeches buoy? I presume you have seen it in practice.

Mr. BARTLETT. Here is a picture of it [producing picture].

Mr. CAPRON. Yes; exactly. I have seen the practice. Thank God, I never was at the other end of the breeches buoy and had to come to land in it. I know that once I rode in one, just for the fun of it, and even on land it did not feel too comfortable; and to think of being dipped in the water by every surge of that line—

Mr. BARTLETT. Here is a picture showing the men taking people out of it.

Mr. CAPRON. Yes. I am very glad you have those, because they will be interesting.

We want for this Service the best men we can get; and after we have gotten a man and given him a year or two of training, we want that man to stay. You can hardly pay that man too high wages under ordinary circumstances, because he has worked and fitted himself for good work in this line; and by the process of elimination under a system specially provided in this bill we will sort them out, and we will get some good ones. The usual men, I think, are worth very little when they first come in, except the men who have been bred right there along the coast; and good coastwise men, as you who live along the coast know perfectly well, are high-priced men.

We can not pick up any sort of sailor that comes into port on a vessel and wants another job. A man who takes one of these jobs must not be a drinking man.

Mr. ADAMSON. Will it answer the purpose and secure the men if you will increase their pay without making them pensionable?

Mr. CAPRON. Do you know, I would like to answer that just in this way if I may, Brother Adamson: The people of this country like to believe that their country takes care of those who are on the firing line if they come to a time when they are injured in the Service, or if they have grown old in the Service. Now, I think that here is

a class of men that are more or less on the firing line every day in their lives. They have to patrol that coast; and if any gentleman of this committee will, on an average winter night, walk along the coast as one of these men has to do, with his kit of Coston lights on and all ready, so that he can answer the signals of vessels, and will follow the coast where the inrush of the sea is washing out gullies, where he is blinded by spray, and thinks that that is a nice little patrol like a man with a musket going up and down a beat, he will just want that one night's experience to convince him of the contrary.

A MEMBER. Or a policeman on the street?

Mr. CAPRON. Yes.

Mr. ESCH. What is the length of the beat?

Mr. CAPRON. It entirely depends upon the nature of the coast. Some coasts have long necks running out, and you can go away out and way back and not go along the coast more than a mile or two; but you would cover a good stretch of sea. There can be no arbitrary determining of that distance.

Mr. ADAMSON. If the danger that they encounter entitles them to a pension, you ought to pension all the passengers on railroads in these days; because the fatality among them is far greater than it is in the Life-Saving Service.

Mr. CAPRON. I am looking to the Committee on Interstate and Foreign Commerce to relieve that situation.

Mr. BARTLETT. Do you not think, as far as railroad passengers are concerned, that if any of them get killed or injured the railroads come pretty near pensioning them through the verdicts they get?

Mr. CAPRON. I should like to appear before the average jury and take my chances on a pension.

Mr. RICHARDSON. Do you not think, considering the nature of this service—it is not military at all; it does not belong to the Army, and it does not belong to the Navy—that it is a pretty long stride in the direction of establishing a civil-pension list?

Mr. CAPRON. No; not at all; not in the least. I do not think that any person looking at this act carefully could see the slightest analogy between this and a civil-pension list. They are a class of men like those in the Revenue-Cutter Service, only more so, who are daily and hourly ready to take their lives in their hands; and they must be brave men, or they are no good. So they are in no class.

Mr. ADAMSON. We only put the Revenue-Cutter Service in that category because they are prepared to render naval service and actually fight, as much as the Navy.

Mr. CAPRON. Did it ever occur to you that all along this same class of men for whom you are now legislating are, by the very terms of their enlistment, a part of the coast guard of the Navy, and are ready—why, what were your orders, Captain, when you took a part of the force during the Spanish war?

Mr. KIMBALL. A very large majority—I will not undertake to give figures, lest I should give them wrong; but out of about 200 stations on the Atlantic coast, 133 were the headquarters of the naval coast guards.

Mr. ADAMSON. Did your men take guns and fight?

Mr. KIMBALL. No, sir; they use guns to save life, not to take life. The first news that came to this country of the arrival of Captain Clark

with the *Oregon* was taken, at our station at Jupiter Inlet and transmitted from there to the Navy Department.

Mr. CAPRON. Brother Adamson, they were really serving at that time and under orders to cooperate with the Navy as far as the coast-wise guard and our inner line of coast defense went.

Mr. STEVENS. You made a suggestion that I would like to know about, by way of comparing this with the fire service in cities. Have you any information as to what cities give higher pay or a pensionable status to firemen who are injured in the service?

Mr. CAPRON. Mr. Stevens, I am quite sure from what I have read, without any positive statistics to go by, that the firemen in cities are being pensioned by the cities themselves.

Mr. STEVENS. Is it not a fact that nearly all of them do that, if they are of any size?

Mr. CAPRON. I think so. I think that is very largely true. I am sure they do in New York; I am sure they do in Boston; I know they do in Providence.

Mr. KIMBALL. And they do in Washington, too, under the authority of Congress.

Mr. STEVENS. I suggest that you cause to be sent to the committee a statement, probably from the Bureau of the Census, that will give those facts.

Mr. CAPRON. My positive knowledge in regard to statistics is uncertain. I simply know that there are many cities of that kind.

Mr. Chairman. I see by my watch that it is 12 o'clock. I know you have heard all you want to hear from me, unless there are some questions that I can answer. I believe in the general principle of this bill. I believe (in just a word) that one great feature of it lies in the fact that these men must look forward to the time when perhaps they will be disabled—and disability has got to come; it is the exception when it does not come to a greater or less extent—and that in case of this disability their wives and children are going to be looked out for a little, are going to be taken care of; that they are not to be left to the mercies of the poorhouse or the public in case they do not leave anything. That is a great feature. I do not think that they are paid to-day a wage that will attract good men to this Service; and that is the kind you ought to have. I believe that the whole thing is a matter of business. If you can get good men to run any job—a factory or a mine or anything else—you will make more money than you will with the other kind. Now, this little proposition of the Life-Saving Service is a money-making business. For every dollar you spent last year on this business you made \$22 in salvage. Perhaps those figures are not exactly right, but the information is all here, anyhow. It is all published here, and can easily be seen. It is a money-making proposition. We want good men when we are going into a money-making scheme like the saving of property; and what the value of human life is I will leave for the committee to determine.

Mr. BARTLETT. The saving of life ought not to be estimated by how much it costs.

Mr. CAPRON. I am talking from the property—the actual dollars' worth of property that was saved by the Life-Saving Service. You

did not understand me, Judge. I said that how much the value of a human life was I would leave for you to determine.

Mr. BARTLETT. It is invaluable, so far as I am concerned.

Mr. CAPRON. Yes, sir.

Mr. WANGER. Do you not think that the fact that there is a flat rate of compensation no matter whether the man has had much or little experience tends to make the men of large experience and skill dissatisfied?

Mr. CAPRON. The flat rate? Why, surely. It would make me feel that way.

Mr. WANGER. Would it not be better if the persons without experience could not get quite as much pay as the others?

Mr. CAPRON. If a man first comes into this service at this low rate of pay, I think the morale of increasing it would be good. My judgment is that he gets a very fair amount now for a beginner that has not been trained for the work.

Mr. WANGER. Does he not get more than is actually necessary if he has not had much experience?

Mr. CAPRON. Well, no; I do not think so; because the amount of time that they serve on the average through the country is only nine months and something, you know. They have pretty nearly three months to loaf during the year.

Mr. WANGER. As I understand, the minimum period of service is ten months.

Mr. CAPRON. No, sir.

Mr. WANGER. I beg your pardon; you are right—eight months.

Mr. CAPRON. Yes, sir. I happened to get it from this publication this morning—nine, or nine and a quarter.

Mr. Chairman, I hope, in order to give the committee a little more time to enlarge on this subject, that the hearing will not be closed to-day.

The CHAIRMAN. It will not be.

Mr. CAPRON. All right, sir; thank you.

The CHAIRMAN. But the time for adjournment has come.

Mr. CAPRON. Yes, sir; I knew that. I thank the committee.

The CHAIRMAN. We will stand adjourned until to-morrow at half past 10.

(The committee thereupon adjourned until to-morrow, Tuesday, February 18, 1908, at 10.30 o'clock a. m.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Tuesday, February 18, 1908.

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn (chairman) in the chair.

STATEMENT OF HON. BEEKMAN WINTHROP—(Continued.)

Mr. LOVERING. Do you think, under this bill as it is before us, that there is sufficient inducement offered to men to recruit the Service as you desire?

Mr. WINTHROP. To attract men to the Service?

Mr. LOVERING. Yes.

Mr. WINTHROP. So as to establish it on an excellent basis it will be necessary to insert in that bill a provision granting a ration to the

keepers and crews of life-saving stations, similar to what they have, as I understand it, in the Light-House Service, in the Army and in the Navy and in the Revenue-Cutter Service, inasmuch as these men are required to be at the stations, provide their own mess, to pay for the expenses of keeping a cook, and all of the expenses incident to their meals, at the same time in all probability being required to keep up a home for their wives and families elsewhere.

Mr. MANN. They do not have a ration in the Light-House Service.

Mr. WINTHROP. I was informed so, Mr. Mann. I was informed so before I came in. I understood that in the Light-House Service each one had a ration of 30 cents a day.

Mr. MANN. That is not the case.

Mr. KIMBALL. Only a portion of them.

Mr. WINTHROP. Only a portion of them?

Mr. LOVERING. How much do they have?

Mr. WINTHROP. There is some doubt about it.

Mr. MANN. There is no doubt about it at all; they do not have a ration. In the Light-House Service I think there is furnished to some of the people who are away from communication, inaccessible, a ration of certain articles. It is only in a few cases.

Mr. KIMBALL. One ration a day is furnished the lightkeepers in certain districts at the rate of 30 cents a day.

Mr. LOVERING. Is it general?

Mr. WINTHROP. I do not think it is. I can call up the chief clerk of the Light-House Board.

Mr. MANN. It is not general and it does not apply to everyone of the districts.

Mr. KIMBALL. No; not to everyone of the districts.

Mr. WINTHROP. Then I am mistaken. I will withdraw that statement. I understood from somebody on my way here that the Light-House Service had a ration of 30 cents a day.

Mr. LOVERING. That is the measure you propose here to secure recruits?

Mr. WINTHROP. That is the measure which I should propose to make this bill very satisfactory, perfectly satisfactory, to the department.

Mr. LOVERING. What would that give to each man?

Mr. WINTHROP. That would give a man a ration of 30 cents a day, one ration, or commutation at 30 cents a day, or practically \$9 a month.

The CHAIRMAN. Would you give that in addition to this increased pay?

Mr. WINTHROP. Yes, I would, Mr. Chairman. I would like to see them get both. I think it is desirable that they should get both. The increased pay is an attraction to remain in the Service, to continue, and this ration is an attraction as soon as they enter the Service.

The CHAIRMAN. Yes, but just think what compensation that would be to a man after twenty years of service, and with the prospect or the security of a pension whenever they are disabled.

Mr. WINTHROP. After twenty years' service I believe it would amount to about \$107 a month for the surfman.

Mr. LOVERING. That is, for a No. 1 surfman?

Mr. WINTHROP. Yes, for a No. 1 surfman; \$100 for a regular surfman. Now, you see that would be only at the rate of \$800 a year

for the Great Lakes, or \$1,000 a year, including everything, on the Atlantic coast. Patrolmen in New York, if I am not mistaken—my figures, apparently, are not always exact, and I do not want to make the statement positive, but as I understand it—get up as high as \$1,400 a year, and in addition to that they have other privileges.

Mr. MANN. What?

Mr. WINTHROP. In their service. They have a retirement pay.

Mr. ESCH. On the police force?

Mr. WINTHROP. Yes, sir.

Mr. MANN. Might I suggest to you in this connection that the finance committee of the city council of Chicago have just recommended a decrease of the pay of the patrolmen on the police force there?

Mr. WINTHROP. What were they getting there?

Mr. MANN. I do not remember the amount there, but they recommended a reduction of over \$100 a year.

Mr. WINTHROP. Of course that would depend entirely upon the amount of their pay before and after the reduction. They might have been overpaid in Chicago.

The CHAIRMAN. Do you think that with the methods and the compensations that are paid by municipal governments ordinarily, as we look at them, with the ordinary experience that we have in this country, they would afford a proper standard for the Government to adopt in the payment of its officers?

Mr. WINTHROP. I think we could adopt certain of their policies with great advantage. Some of them, I think, we could not adopt. I will not say. I think the policy they have of paying their firemen and policemen a good salary and also providing for them at the end of their service, providing they have rendered efficient service and have become disabled, is a good policy. When you realize that the average surfman only gets \$600 a year, you will see that it is a very small pay.

Mr. TOWNSEND. There is no competition between the men that go into the municipal service, as policemen and so on, and the men you get in the Life-Saving Service?

Mr. WINTHROP. Oh, no, because they have absolutely entirely different duties; absolutely different. A policeman, in all probability, would not make a good surfman—at least he would not necessarily make a good surfman—and a good surfman probably would not make a good policeman.

Mr. MANN. The Civil Service Commission says that the regulations and application blanks and everything in relation to obtaining service in the Life-Saving Service which they make are made conformable to the recommendations of your department. Have you ever examined the application blanks and regulations?

Mr. WINTHROP. I have not.

Mr. MANN. I would commend to your wise attention an examination of them. I think they would scare anybody.

Mr. WINTHROP. I will examine them.

Mr. MANN. I have seen a good many ridiculous things, but I think I have never seen anything more ridiculous. I thought that I had a copy of the regulations here, but I find that I have not.

Mr. LOVERING. Application for what?

Mr. MANN. For admission to the Life-Saving Service.

Mr. WINTHROP. I believe if you have an examination at all for the entrance to the Life-Saving Service such as that, it ought to be of the simplest kind, the age and so on of the applicant, his ability to read and write, and his skill in the surf and his experience in that.

Mr. MANN. It is my idea that the man does not live, with any sort of education and experience, that can fill out that application blank correctly short of a month's study.

Mr. WINTHROP. I have not read it. I will call for one and go over it and take it up with the Civil Service Commission.

Mr. LOVERING. Under this bill, with the ration allowance, what is the minimum amount that a surfman will receive, and what is the maximum amount that he will receive after twenty years' service?

Mr. WINTHROP. The minimum amount, with the ration allowed, which a surfman would receive, would be \$65 plus \$9, or \$74 a month.

Mr. LOVERING. For an average of how many months, nine months?

Mr. WINTHROP. For an average of nine and a quarter months. That would be \$675 or \$680.

Mr. LOVERING. That would be the minimum?

Mr. WINTHROP. That would not be the minimum; that would be the average minimum. Some men would be in the Service only eight months, and—

Mr. LOVERING. That would not be the minimum. Some men have been in the Service but five years.

Mr. WINTHROP. A man who had not been in the Service five years would receive \$65 a month, and also this ration of \$9 a month, making \$74 a month. For a period of eight months on the Great Lakes that would make \$592.

Mr. LOVERING. And what would he receive if he got the fullest possible emolument that he could get, of course after twenty years' service? I want to see whether in any event the man is extravagantly paid, in your judgment.

Mr. WINTHROP. At most, with the 40 per cent increase and the ration, he would get \$100 a month. On an average, taking the average term of service of all the surfmen of nine and a quarter months a year, he would get \$925 a year.

Mr. LOVERING. That is the maximum?

Mr. WINTHROP. That is the maximum pay which the average surfman would get after twenty years' service.

Mr. LOVERING. And he never would receive any more?

Mr. WINTHROP. And he never would receive any more. On the Great Lakes, for instance, he would get \$800 a year, on the Atlantic coast he would get \$1,000 a year, and on the Pacific coast he would get \$1,200 a year; and if you take the average term of service of those on the Atlantic, the Pacific, and the Great Lakes, they would average \$925 a year. That would be the maximum pay, including rations, after twenty years of service.

Mr. LOVERING. And your judgment is that that is not in any case an overpayment for that class of service?

Mr. WINTHROP. My judgment is that that is not in any case an overpayment. I think after a man has been twenty years in the Service \$925 a year for the service that those men render is not excessive. I was going to say, in speaking about the patrol, I had meant to bring down to-day a lantern which I have in my office the glass of which has been ground by the force of the sand being blown

against it. These surfmen carry a lantern on their patrol, and the glass of this lantern has been actually ground by the sand being blown against it. It is rather an interesting exhibit, showing the severity of the weather and the difficulty of this patrol duty.

Mr. KNOWLAND. That is a lantern which has been carried by one of the patrolmen?

Mr. WINTHROP. Carried by one of the surfmen on his patrol duty.

Mr. ESCH. Do you know anything about the Canadian service on the Great Lakes?

Mr. WINTHROP. I do not know anything about that. I could not tell you about that. The life-saving service in Canada has not developed to any great extent at the present time. They are practically, as I understand it, about reaching out at the present time. They have ordered a power lifeboat on the model of those we are now constructing, and they have had them constructed under our supervision.

Mr. LOVERING. So that in any case there never arises a case where the pay would exceed \$1,000, except on the Pacific coast, where they serve twelve months in the year, and their pay would be \$1,200 a year, rations included?

Mr. WINTHROP. No, sir.

The CHAIRMAN. Do you think it would be desirable to continue the men in the Service the entire year?

Mr. WINTHROP. I presume that on the Great Lakes, where they have no navigation, it probably would be unnecessary. It is not so necessary on the Atlantic coast during the months of June and July, but it is one of those cases where the additional cost would be fully made up by the chance of having wrecks and disasters. We have had wrecks and disasters in June and July, and the additional cost of keeping the men throughout the year would be fully compensated by having the additional men on watch at that time, and I should be in favor of it, from my personal view, although I have not talked with anyone as to that.

Mr. KNOWLAND. Is there not great danger in the summer time in the heavy fogs we have?

Mr. WINTHROP. On the Pacific coast they have them all the year round.

Mr. LOVERING. Have you made any calculation, a sort of actuary calculation, as to the number of surfmen who would arrive at the twenty-year period and receive the benefit of it?

Mr. WINTHROP. Of course you can tell that, possibly, by Table No. 1, which you have at the present time before you. I presume that being altogether fair I would have to say that some more than these would arrive at the twenty-year period, providing we gave the additional pay. They would be desirous of remaining in the Service, and we could keep the competent and efficient men. At the present time you will see that the number of surfmen now over the twenty-year period of service is 181, including No. 1 surfmen and the rest of the crew.

Mr. LOVERING. Including what?

Mr. WINTHROP. All the surfmen, the No. 1 surfmen and the rest of the crew, not distinguishing between the No. 1 surfmen and the others.

Mr. LOVERING. That is 181 men out of 1,900?

Mr. WINTHROP. Yes, sir; that have been in the Service over twenty years.

Mr. LOVERING. So that the aggregate expense to the Government would not be in proportion to the actual number of people employed in the Service at all times?

Mr. WINTHROP. No; I believe that this is really a practical business proposition. I mean, I believe it is a proposition that any business establishment would adopt. They would get better service and more efficient service for the same amount of money.

Mr. LOVERING. It is economical?

Mr. WINTHROP. It is an economic principle, yes, sir. Unless you have some questions to ask me, I have nothing more.

STATEMENT OF CAPT. D. T. TOZIER.

Mr. LOVERING. Have you anything to tell us, Captain, about the necessities of the Life-Saving Service?

Captain TOZIER. I do not know that I can add anything to what has already been said. My term of service has been on the Pacific coast. I will be very glad to answer any questions in relation to the Service at that point.

Mr. LOVERING. Are you able to keep a high, first-class character of men?

Captain TOZIER. We have not been able to there, no, sir. The expense of living out there is about 30 per cent more than it is on the eastern coast. Their mess bills average about \$18 a month, and that has to be deducted from their pay of \$65 a month, and then they have to pay for their own cook, each surfman usually paying about \$4 a month. That makes \$22 a month reduction, and then they have to pay for their uniforms about \$2 a month more, which makes a total of about \$24 a month to be deducted from their regular pay.

Mr. LOVERING. What would be deducted on our eastern coast?

Captain TOZIER. I do not know very much about the eastern coast.

Mr. ESCH. You were inspector on the Pacific coast?

Captain TOZIER. On the Pacific coast I was inspector for three years. We experienced great difficulty there in getting good men. We can fill up the vacancies, but they are not good men that we get. Probably if the keepers could have more to say in the selection of men it might be different.

Mr. MANN. Where would the good men come from?

Captain TOZIER. A great many of them are surfmen, fishing on the Columbia River. They graduate a great many surfmen at that point.

Mr. MANN. You want to take away those men from commercial pursuits to make up the deficit in your Service?

Captain TOZIER. No, sir; I do not think it would interfere with the work on the Columbia River, and we get some of our best men there.

Mr. MANN. Is there a surplus of surfmen on the Pacific coast?

Captain TOZIER. The surf is very dangerous at the mouth of the Columbia River.

Mr. MANN. I say is there a surplus of surfmen there?

Captain TOZIER. I did not quite catch your question, sir.

Mr. MANN. Is there a surplus of men, of surfmen, out there?

Captain TOZIER. No, sir; we have not more men than we want.

Mr. MANN. I do not mean in the Life-Saving Service, but you will not take anyone in the Life-Saving Service unless they have been five years, practically, as a surfman somewhere else?

Captain TOZIER. We have to take them sometimes with a less experience than that.

Mr. MANN. You will not take anybody unless he has had five years' experience somewhere handling boats in rough water, under the civil-service rules. Now, where are you going to get those men from?

Captain TOZIER. We get them wherever we can, wherever they are to be found, no particular point.

Mr. MANN. Then what you want to do is to offer higher pay so as to take them away from the commercial pursuits in which they are engaged?

Captain TOZIER. We take them wherever we can get them.

Mr. MANN. Will not that inevitably result in the people in the commercial pursuits offering higher pay in order to retain them?

Captain TOZIER. I do not know.

Mr. MANN. And you will be as bad off after you get through as you were before you commenced. Is it not true that neither one wants to take the trouble to educate the men, and in the Life-Saving Service you will not educate the men?

Mr. LOVERING. The man in the Life-Saving Service is supposed to be educated, is he not, or he can not pass the civil service?

Captain TOZIER. He is required to have experience as a surfman and boatman. The pay is so small that we have sometimes to take inferior men, and when we go to a wreck we desire the very best men that we can have.

Mr. MANN. You say that the pay is small. You said a moment ago that after a man paid for his board and his uniform and the cooking of his meals, and so on, his entire outlay, he would still have \$41 a month of his salary left?

Captain TOZIER. The mess bills average \$18 a month.

Mr. MANN. Yes.

Captain TOZIER. And each man pays his proportional part for the cook, usually from \$4 to \$6.

Mr. MANN. You said a while ago it was \$4. Now you make it \$6.

Captain TOZIER. Well, \$4. At the station at San Francisco they pay \$40 for their cook.

Mr. MANN. You gave the total amount as \$24 and that leaves \$41 out of his total pay of \$65, which is net to a man after he pays for his board and his clothing.

Captain TOZIER. Extra clothing.

Mr. MANN. His uniform; I will not say his full amount of clothing.

Captain TOZIER. Yes, sir.

Mr. MANN. Now, do they make that much in commercial pursuits out there?

Captain TOZIER. I do not know what they make; I could not answer that question. I have no means of knowing.

Mr. MANN. Is not the main trouble about your getting men out there the fact that an ordinarily good man that can get a job at any time will not go through the endless minutiae of making application to this Civil Service Commission in the manner which they require; ridiculous on its face?

Captain TOZIER. I think that has kept some good men out of the Service. I remember I recommended once a man that passed at 98.5 or 98.6, I forget just which. He had been fishing, and he was a most excellent surfman, an excellent swimmer, a man able to sustain himself in water and probably the weight of a drowning man besides. He was considered one of the very best surfmen on the Columbia River. His name was Pierson. He had just passed with a mark of 98.5, and I recommended the man. That was in September, and he waited until February and he had heard nothing from the Civil Service Commission, and his money that he had earned the previous summer was very nearly expended, and about that time they began to engage fishermen in the Columbia River for the next season, and he had no means of knowing how he had passed and whether he would be appointed or not, and he engaged himself for the fishing, and two days afterward we were notified that he had passed. That is one of the instances I remember of that kind.

Mr. MANN. In the Life-Saving Service do a good many of the men use tobacco?

Captain TOZIER. I think they do.

Mr. MANN. Do they smoke and chew?

Captain TOZIER. I think they do; some of them.

Mr. MANN. Does it injure them in any way?

Captain TOZIER. That is a question I could not answer.

Mr. MANN. And yet they require every man to tell all about it when he makes an application, as to whether he uses it and how much.

Mr. LOVERING. Does the use or nonuse affect the percentage?

Captain TOZIER. I could not tell you; I do not think so.

Mr. KIMBALL. That is not considered in the recommendations for the Life-Saving Service by the Treasury Department.

Mr. MANN. The application blank that they issue is made conformable, as they say, to your views. You ought to correct that impression on their part.

Mr. KIMBALL. Is that in regard to their medical examination?

Mr. MANN. No, sir.

Mr. KIMBALL. I think you will find that in all the examinations that they make under the civil service.

Mr. MANN. I have a letter from the Civil Service Commission in which they say:

In view of the misunderstanding on the part of some members of your committee with regard to the examination for the position of surfman, the Commission invites your attention to the fact that the regulations and the form of the examination are in accordance with the views of the Life-Saving Service.

Mr. KIMBALL. It was approved by the Life-Saving Service.

Mr. MANN. They ought to revise it.

The CHAIRMAN. Would you be willing to employ a surfman who did not use tobacco, and who did not occasionally use liquor? Would you not consider that there was something abnormal about him that would unfit him for the Service?

Captain TOZIER. I most assuredly should.

Mr. KIMBALL. I suppose a large majority of the people in the Life-Saving Service use tobacco.

Mr. MANN. I only gave that as one instance out of a hundred in that application blank that are equally ridiculous.

Mr. LOVERING. Who prepared this blank?

Mr. MANN. I am sure that I do not know. Some man without the fear of God or man, probably, in his soul.

The CHAIRMAN. Have you anything further that you want to say?

Captain TOZIER. I think something ought to be done. I know there are a good many surfmen on the Pacific coast, and I do not know that it applies to keepers, but I feel sure—I know—that we will lose some of our very best men there unless Congress does something. The requirements of the service are very severe. Men have to patrol those beaches night and day in the worst of weather, and they have six or seven drills each day, and living is very high on the Pacific coast and for the small amount of money they receive they are dissatisfied. It can not be otherwise. A man can not expect to work there for \$10 a week and support a family. It is impossible; they can not do it; and unless something is done to encourage the men we will lose some of our best men there.

The CHAIRMAN. You say you have six or seven drills a day?

Captain TOZIER. I do not know how many, exactly, but I think there are eight drills that must be performed each week, and some of them are very severe on the men. The capsizing drill, capsizing the boat in the cold water, all the men in the water, is very hard on them. It has to be done, and is done.

The CHAIRMAN. How frequently is that capsizing drill done?

Captain TOZIER. I required it every month. I would excuse them in very severe weather; I had to do it. The men were old, some of them, and it was absolutely necessary to excuse them in that particular drill.

The CHAIRMAN. Which would you think would be better for the service, for the purpose of popularizing it, to give this increase of 10 per cent for each five years, or a ration?

Captain TOZIER. They ought to have both.

The CHAIRMAN. They ought to have both?

Captain TOZIER. Yes, sir.

The CHAIRMAN. Suppose you could not get both, which would you think was preferable for the good of the Service?

Captain TOZIER. I would think the ration, perhaps.

The CHAIRMAN. Would you make it a ration in kind, or would you commute it?

Captain TOZIER. I would commute it.

The CHAIRMAN. Would you commute it at a fixed price?

Captain TOZIER. Yes, sir.

The CHAIRMAN. Or at the local value?

Captain TOZIER. That would be subjected to endless criticism, because in some places they would charge more than at others. I think it ought to be made a fixed rate.

The CHAIRMAN. What is that rate?

Captain TOZIER. Thirty cents a day. I think in the light-house service they allow them 50 cents a day, and in some places a dollar. All I know is that they allow them in light-houses and light-ships.

Mr. MANN. They may at some places on the Pacific coast, but as a rule, where they allow anything at all they allow a certain amount of things that the keepers can not get themselves, and that have to be kept in storage, and are subject to destruction; and sometimes in preference to doing that they give them commutation.

Captain TOZIER. Some of the stations are 50 and 60 miles from railroad transportation, and provisions are high.

Mr. MANN. In such case it would be better to have fixed rations of certain things delivered to them.

Captain TOZIER. Possibly.

Mr. MANN. That is the only reason it is done in the light-house service.

Captain TOZIER. I think they purchase things and distribute them to the light-houses in such cases as you suggest.

Mr. MANN. In a few cases only.

Mr. LOVERING. You think, then, that the mere prospect of an increase of 10 per cent after five years' service would not be sufficient?

Captain TOZIER. No, sir; I do not.

Mr. LOVERING. To recruit the Service?

Captain TOZIER. It is a long time for that class of men to look forward five years to an increase of pay, and I speak only for the Pacific coast, because I do not understand quite the conditions on this side, but out there the living expenses are much higher than they are here, and labor is higher. Almost any of those men would receive from \$3 to \$3.50 a day, and as wood choppers they would earn more than they do in the Life-Saving Service; and during a successful fishing season on the Columbia River they would receive more in four or five months than they would receive in the Life-Saving Service for an entire year.

Mr. LOVERING. Your jurisdiction extended up to the Canadian line?

Captain TOZIER. Yes, sir.

Mr. LOVERING. Are they having like troubles?

Captain TOZIER. The very first boats were put in commission there a few months ago. I do not know what difficulties they are meeting with there. That is on the west coast of Vancouver Island.

Mr. LOVERING. Do you know what their rate of pay is?

Captain TOZIER. No, sir; I do not know about that.

Mr. MANN. Do you know whether they have had any Life-Saving Service up there?

Captain TOZIER. They never have had any, to my knowledge; but they have built one station now at Barclay Sound, or near there.

Mr. MANN. Are most of the men out there single or married?

Captain TOZIER. I think they are about equally divided.

Mr. MANN. Does it make any difference in taking men into the Service whether they are single or married?

Captain TOZIER. No, sir; I think that other things being equal, they would prefer a single man.

Mr. MANN. Is it anything for or against a man that he has been married and is not now?

Captain TOZIER. Not that I know of.

Mr. MANN. The reason that I ask is because they make that inquiry in the application blank.

Mr. LOVERING. Unless some gentleman wants to ask some more questions, I believe that is all, Captain.

STATEMENT OF HON. WILLIAM W. COCKS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK.

Mr. COCKS. Mr. Chairman and gentlemen, in my district there are more of the life-saving stations than in any other district in the United States, I think. I do not know that I can add to what Mr. Capron said yesterday. He expressed very fully my views on thi

question, and impressed on the committee the important character of this Service. The thing that, perhaps, I wish to call your attention to most particularly is the class of men we have had in the past, and hope to have in the future. These men that have served time in the Life-Saving Service are frequently mates and masters of coastwise vessels after they have been some years in the Service, some are captains of yachts, and so forth, and they are not the ordinary men that you find before the mast on a coaster; not at all. They are recruited from a very good class of young men around our coast, and they should not be classed in the minds of the committee in any way with the ordinary gang of men before the mast on a coaster or on a deep-water sailing vessel, either one.

It was my intention to have brought here to be heard before the committee a few men who were in the Service, who could answer these questions directly from personal experience—men now in the Service or who had been in the Service; but owing to the conditions existing now on the coast I have been unable to do so. I had a telegram saying it would be impossible to get two or three men to come away at this time, owing to the storms on the coast and to a number of wrecks—we have had three or four wrecks in the past ten days—and particularly, also, because it is almost impossible to get across the bay. There are no stations except across the bay, and just now the ice is not strong enough for a scooter and the water is not clear enough for a boat. I trust this committee may take some action; I do not like to suggest just what or how. I believe they know about the subject from what they have heard from the Department and from the hearings, but I want to suggest the importance of the retirement feature of this legislation. As to whether a ration is given or increased pay is given, or both, that is not so material. Of course I would like to see that, and I believe the Service is worthy of it. I believe that the character of the Service here is much greater than anybody appreciates that never has been along the beach under the conditions under which those men work, especially in the winter time, and I would like to invite you gentlemen to come down into that country even in the summer time and participate in the launching of a surfboat, and see what it is like, and then just try to imagine what it would be like on a cold winter night, in the dark and with a severe storm.

Now, these men do not sit around as has been suggested, in their houses. They are continually occupied with drills and with patrol duty, and I hope that this session will not pass without some relief being granted to these people, because it is certainly their due, and especially in my district the number of men and the class of men we have been getting has not been as good as in the past, due to the fact that wages have so largely increased in other lines in our particular neighborhood. As to just what effect this little temporary financial stringency will have on the labor market there, I am not prepared to state, but most of us have not felt it much, except those of us who are directly connected with Wall street.

Mr. ADAMSON. Did we understand you correctly to invite us to come down to see you?

Mr. COCKS. Yes, sir; I will be very glad to see every member of the committee.

Mr. ADAMSON. I, for one, shall be in favor of accepting your invitation.

Mr. COCKS. I do not know that I have anything further to say about this, but I hope you will give it careful attention, because I think it is a matter of very great importance.

STATEMENT OF MR. H. M. KNOWLES.

Mr. MANN. Will you tell us about this matter anything you want to?

Mr. KNOWLES. I am somewhat handicapped in coming before this committee, because I have never yet seen a copy of the bill, although I perhaps know something about it, and I have an idea what it is; and I did not know that I was expected to come here until yesterday afternoon, when I had only an hour and forty minutes to get ready. I have some data that I would like to present to the committee. Since realizing what the new bill was, I have made a canvass of my district, and I find the term of years that the keepers and surfmen average in that district is a trifle over five years for all of them. I find that seven men, including the district superintendent—that is myself—have served a period of twenty years and over, and but seven; and I have written a hurried sketch of each of these surfmen and of myself, which I would like to present to the committee as evidence of their faithfulness in the service and of the character of the work that they have done.

Mr. MANN. What is the number of your district, and what is it?

Mr. KNOWLES. It is the third life-saving district.

Mr. MAN. That is Long Island?

Mr. KNOWLES. That embraces the coast of Rhode Island and Fishers Island, including Block Island.

Mr. LOVERING. Have you ever served as a surfman yourself?

Mr. KNOWLES. Yes, sir; I entered the Service in 1876 as surfman No. 1 at the Point Judith Station, resigning a position as mate of a vessel to accept that position at \$40 a month, which is one-third less than they are getting now.

Mr. LOVERING. Did you ever see any hard service?

Mr. KNOWLES. I have seen my share of it, I think. I have a list of over 600 wrecks here in my pocket, which I have compiled from memory and records of the Service to show what we have done in the third life-saving district—that is, what was then a branch of the third life-saving district. That is, the Long Island district and the Rhode Island district were one at one time, but I have confined myself to these records of wrecks that have occurred within the scope of my present district, including a part of Fishers Island—that is, the eastern extremity of it, Block Island, Point Judith, Beaver Tail, and Newport—and these seven men who have served twenty years or more are directly or indirectly connected with nearly all of these wrecks that I have in this list.

Mr. MANN. You say you entered the service in 1877?

Mr. KNOWLES. 1876, November 15.

Mr. MANN. How long did you serve as a surfman?

Mr. KNOWLES. I served as a surfman two seasons and part of another.

Mr. MANN. And then you were promoted to keeper?

Mr. KNOWLES. To keeper; yes, sir.

Mr. MANN. How long did you serve as a keeper?

Mr. KNOWLES. I served as a keeper at the Point Judith Station eleven years. I was thirteen years at Point Judith.

Mr. MANN. Then you were promoted to superintendent of the district?

Mr. KNOWLES. No, sir; then I was promoted to assistant superintendent at \$1,000 a year.

Mr. MANN. How long did you serve as assistant superintendent?

Mr. KNOWLES. From 1899 up to about 1900. I have been superintendent since about, I think, July, 1900.

Mr. MANN. And is it during that period since you entered the Service that in this district there have been over 600 wrecks?

Mr. KNOWLES. I will show you this list in order to make myself plain. The first page of this list contains wrecks that take in back as far as 1752 on Block Island, such as the *Palatine*. The next page comes down to the time of the establishment of the Service, in 1871. I find here a list of wrecks that I am not in possession of, but at home I have their valuation and such information as that; but beginning along on the next page, which you see contains only a few of the earlier ones, there are probably 575, or something thereabouts, from that time on.

Mr. MANN. In what period of time did those 575 wrecks occur?

Mr. KNOWLES. Since 1870.

Mr. MANN. Since the establishment of the Life-Saving Service?

Mr. KNOWLES. The Life-Saving Service was established in 1871, and this is since 1872, beginning with the steamer *Metis*.

Mr. MANN. How many stations have you in your district?

Mr. KNOWLES. At the present time we have nine, partly manned by regular men.

Mr. LOVERING. Did I understand you to say that the average term of service of the surfmen in your district was five years?

Mr. KNOWLES. Yes, sir; it is five years and something like one-fifth or one-sixth. I have those figures, but I have not got them here. I did not have time to get the papers out of my grip, as I just came in on the morning train and had barely time to connect with Mr. Kimball to come up here.

Mr. LOVERING. You think that this bill would prolong that period? Do you think it would increase the average time?

Mr. KNOWLES. No, sir; I do not see how it can in my district.

Mr. LOVERING. Not with the terms of this bill?

Mr. KNOWLES. No, sir; I do not.

Mr. MANN. Why, Captain?

Mr. KNOWLES. There are numerous reasons. I have three stations on Block Island, which is a summer resort and a fishing camp, and the men there in the fall and winter make anywhere from \$10 to \$60 a week cod fishing in smacks. In the spring those that want to, and do not like to go fishing, have all the work they can do in getting the hotels ready; and during the summer months they have teams and pleasure boats that earn them a great deal more money than they can get in the Life-Saving Service. At Newport there is one station where the conditions are equally bad. It is only about twenty minutes' drive to the city, and the best of the men get positions running launches and running pleasure boats and at other work, and that is the way that we have lost the best of our men in the district, who have taken those positions. At Fishers Island, I have had the pay roll from that station, which is the only official docu-

ment since the 25th of last month. That is an island by itself, and they depend upon their own efforts. The crew go over from the mainland, and the first part of last month there was not a regular man on duty; they were all substitutes. Watch Hill is a summer resort and fishing resort. There is no better place in the country for both for those men to make a livelihood.

Narragansett Pier is another place where we have a station, and Point Judith is the last, and of all places it is termed as a fog hole on our coast charts, and a man never goes there that he does not see the bones of some good vessel. It might be considered the worst station we have. We have had more than 200 wrecks on Block Island since the Life-Saving Service was established, as you can count up from this list. One of those seven men whom I have mentioned, including myself, is surfman No. 1 on the Block Island Station. He was too old and infirm to appoint keeper when the change was made. I found it necessary, in making the change for the betterment of the Service, to put in a No. 2 man who was a much younger person and better qualified to help out in the work. That No. 1 man has done valuable service. I have a little sketch of his life right here. The keeper at the New Shoreham Station is a man 65 years of age. He has been in the Service about the same length of time that I have, perhaps thirty-one or thirty-two years, and he has done much valuable work during that time, and of course he can not stay in much longer. A man 65 years of age can not expect to remain in much longer. I have mentioned two out of those seven men.

The keeper of the Brentons Point Station has been in the Service thirty years. He sat at the table with me at Point Judith for eleven years, and I do not think any man of his age, unless it is myself, has been to more wrecks than he has, and we have been to a great many together. This man, Capt. C. C. Kenyon, the keeper of the Brentons Point Station, saved the Government about \$20,000 in one fire at his station, and he was unmercifully burned, but he saved the building; and the report which I made in 1904 is here, together with a little sketch of his life and two photographs showing the station and barn that he saved, and showing the condition that he was in from his burns. The night I was there and nursed him he was unable to see out of any eye, and I never saw a fireman burned so badly as that man that was not a corpse, and nobody else ever did, I think.

Mr. LOVERING. Is he still in the Service?

Mr. KNOWLES. Yes; he is the third out of the seven. He entered in 1877, succeeding his father at the Point Judith Station when I also was a surfman there, and while there, in the eighties we did a great deal of work, and the record of our Service will be shown by Mr. Kimball. I alone saved over 100 people in that district in one year in boats and breeches buoy. Another keeper, the fourth man out of the seven, is the keeper, Capt. Albert Church, of the Narragansett Pier Station. Another one of the seven is Surfman Casey, of the Brentons Point Station.

The CHAIRMAN. Our time is passing very rapidly, and I would suggest that you leave those documents with us. They may be printed.

Mr. KNOWLES. I would like to do that. If you would like to have a copy of this list of wrecks, I will be pleased to leave this with you. That shows you the work of these seven men since 1872.

Mr. TOWNSEND. I understand, then, that you think this bill would not help out this matter at all?

Mr. KNOWLES. I do not see how it will benefit the part of the Service that we want to hit—that is, the working force. That is what we are looking after. The Service is in bad condition on that account, and there is no way that Congress can show appreciation more, there is no way that it can show to these men better that it is to their interest to stay in the Service, than by recognizing the services of those seven men right there. A few dollars' raise of pay doesn't amount to anything in that connection; but if they can simply say, "Look at Surfman Casey, and look at Surfman Charles Mitchell; see what they have done for those men that have been so long in the Service;" that is what will have a great effect. That is all that I can tell you, gentlemen; when the services of these men are recognized, then they would feel that it was worth while to do something.

The CHAIRMAN. How would you have the services of these men recognized? What is your plan?

Mr. KNOWLES. I have several ideas, of course.

The CHAIRMAN. That is what we want to have.

Mr. KNOWLES. But when a man comes into the Service as a young man and has served twenty years or more he is a pretty straight and decent sort of fellow, and if he stays in, as I have stayed—I refused \$1,800 a year when I was getting \$1,000 a year as a superintendent, and Mr. Kimball knows that, because I told him of it at the time—and as others have stayed in, at the small pay we have gotten, I think if their services could be recognized and the heroic work that they have done could be recognized, that would help as much as the raise of pay that is offered by this bill, as I understand it. These men have to live apart and separate from their families at a basis of, you may say, \$1.50 a day, and they have to work Sundays and holidays and nights, and in order to get that \$1.50 a day they have got to live at the station for 67 cents a day, and that pays for the cook that they hire and the victuals that they eat and the extra clothes that they wear. They are now getting \$2.17 a day, and in order to get \$1.50 a day to carry home to their families, as a day laborer does, they have got to live at that station at 67 cents a day, and it costs them on an average about \$13 a month to live at the station. On Block Island and some of the other stations they live for \$11 and \$12 a month. On Fishers Island it costs them as high as \$25 a month.

Mr. ESCH. Would the granting of a pension help?

Mr. KNOWLES. Something that they could lay aside would do more to get those men than anything else.

Mr. ESCH. That is included in this bill.

Mr. KNOWLES. As I told you, I have not seen a regular copy of the bill. I have had no time to talk with anybody about it, and as I say, I came here handicapped and not in a position to say what I would like to say, or perhaps I would like to bring out for the real benefit of the Service. We have lost almost all of our good men because they have been offered good positions elsewhere.

Mr. MANN. What do your men do during the months of June and July?

Mr. KNOWLES. In the Life-Saving Service; during the inactive season?

Mr. MANN. Yes.

Mr. KNOWLES. There are sixty days there, and most of them go fishing, and on Block Island many of them run pleasure boats and drive teams, taking the summer people about the island, and they make big pay for that.

Mr. BARTLETT. How would it do to provide for a ration for these men? Would that help any?

Mr. KNOWLES. Yes; I think it would help some. I think that would help some. The old saying is that "Every little helps;" but the question in my mind is what would help the most, as I understood the question from Mr. Lovering.

Mr. LOVERING. You are not prepared to state exactly what plan you would suggest to best conserve this service?

Mr. KNOWLES. Well, I can offer several suggestions such as I offered to the general superintendent some time ago.

Mr. LOVERING. Let us have them.

Mr. BARTLETT. What are they?

Mr. LOVERING. What are they?

Mr. KNOWLES. The first is, that I think that a No. 1 man should be paid more per month than any other member of the regular crew except the keeper—considering him one of the regular crew.

Mr. LOVERING. That is the case now, is it not?

Mr. KNOWLES. And I think that a few men should have a little inducement in that direction, also; but the majority of them say that money is too easily spent and fast gone, and they have got nothing in the end, and they would rather get out and get a little vessel in which they can earn their livelihood and be at home with their families. There is nothing, no one measure, in my opinion, that would do more in the necessary direction, than to provide for these seven men. Here are these seven men, and if they were provided for, for the future, the others would gladly stick it out.

Mr. LOVERING. You are here, then, making a special plea for those seven men, are you?

Mr. KNOWLES. No, sir; I am only too glad to say all I can for all of the life-savers; but you must bear in mind that about one-third of the men we have got on are not worth much for life-saving—plagued little.

Mr. LOVERING. Are you looking for increased pay for them?

Mr. KNOWLES. These men that I am speaking about now that do not amount to much are men that we have been obliged to take on in the past several years to replace the good men that have gone, and they are fellows that will work themselves out pretty quick because they are not of proper character and respect for the Service to put to work for the interests of the Service.

Mr. KNOWLAND. You do not think that if the pay were raised they would do any better?

Mr. KNOWLES. It would help those fellows who are in there to stay and to work better, but what we want to do is to get back men that we have lost.

Mr. KNOWLAND. You do not think that this raise of pay would get them back?

Mr. KNOWLES. No, sir; not the raise of pay alone.

Mr. LOVERING. Would a prospect of retirement pay get them back?

Mr. KNOWLES. Yes, sir; because if their past services and records are recognized, that would help them out in that way with the longevity raise, and with the other raise for the future; it helps them out, and we could get back some good men, and that is the only thing likely to get them back.

The papers submitted by Mr. Knowles are here printed in the record in full as follows:

KEEPER CHURCH.

Capt. Albert Church, keeper of the Narragansett Pier Life-Saving Station, was born in the town of Charlestown, R. I., April 20, 1850. He entered the United States Life-Saving Service at the Narragansett Pier Station, under the command of Capt. Benjamin Macomber, November 15, 1875, as surfman No. 1. He was promoted to the keepership (succeeding Captain Macomber, who retired on age) September 10, 1880, a position he has since held with integrity and honor; during which time he has figured in many prominent wrecks in which many lives were saved, due mostly to his great courage, skill, and excellent judgment.

Before entering the Service, like many others that composed the life-saving crews in the early days of the Service, he was a shore fisherman. As a life saver he stands with the foremost in the art and skill of their profession.

He is in his fifty-eighth year, and being overtaken with infirmities of life and rheumatism produced by so many years of exposure in the discharge of his duties, is entitled to special recognition for faithful services.

SURFMAN CASEY.

Surfman Joseph Casey was born November 17, 1863, and has always lived and fished about Newport, R. I.

He entered the Life-Saving Service as Surfman No. 7 of the Brenton Point crew December 1, 1884. Resigned April 16, 1887, to attend to important business. Re-entered the Service the next active season and resigned again August 1, 1898. He re-entered the Service August 1, 1899, and owing to his good qualifications was made No. 1 of the crew, a position he now holds.

He has figured in all of the wrecks having occurred within the jurisdiction of that station, and was one of the principals in fighting the fire at that station, and also took an active part at the fire on the Davis estate at the time the stable was burned and the Davis mansion saved by the valuable services of the Brenton Point life-saving crew.

He is 44 years of age and the main support of two or three sisters.

KEEPER KENYON.

Capt. C. C. Kenyon was born at Point Judith, R. I., January 30, 1859. He entered the United States Life-Saving Service as a surfman November 15, 1877, succeeding his father, who was one of the original crew at that station. His elegant qualifications were recognized by the district officers of the Service, when he was promoted to the keepership of the Brenton Point Station April 11, 1887 (succeeding Capt. A. G. Gould, resigned), a position he now holds.

Since connected with the service he has cooperated in many successful rescues both at Point Judith and his own station.

May 4, 1904, during a fire at the Brenton Point Station, he performed a very creditable and heroic act in taking the principle part in putting out a fire that threatened to destroy the station and whole outfit, thereby saving the station and apparatus, which could not be replaced for more than \$20,000. In this brave act he suffered great torture by being burned beyond recognition, and so frightfully that when seen by his wife she was so terribly shocked she gave premature birth to a child, and her death soon followed, leaving two small children that are being cared for at considerable expense to him. A detailed report of the fire made on May 5, 1904, by the district superintendent, accompanied by photographs showing the frightful manner in which he was burned, is attached.

He also, with his crew, rendered timely and valuable service at the time the Davis stable was burned, and they are credited with saving the Davis mansion in which Davis was ill at the time.

Captain Kenyon has served the Service faithfully both as surferman and keeper for the past thirty years. He is 48 years of age, and though badly scarred and disfigured about the hands, neck, and face from his heroic work, is yet agile, and still retains his courage, and is a person whose noble work and brave deeds of the past are worthy of special recognition.

LIFE-SAVING SERVICE,
OFFICE OF SUPERINTENDENT, THIRD DISTRICT,
Wakefield, R. I., May 5, 1904.

Hon. S. I. KIMBALL,
General Superintendent United States Life-Saving Service,
Washington, D. C.

SIR: I have the honor to make the following report regarding a fire at the Brentons Point Station yesterday. In response to a telephone message received via Weather Bureau Office, Narragansett Pier, R. I., from the keeper regarding the fire and requesting my presence at the station, I proceeded to the station after telegraphing you for authority to do so, arriving in Newport about 6.30 p. m. I drove at once to the station, where I found the keeper shockingly burned about the face, neck, and hands (unrecognizable) and being cared for by Doctor Ecroyd, of the Marine-Hospital Service, and Professor Conley, a friend of the keeper.

In explanation, regarding the fire, will state that the station was undergoing its usual annual cleaning, as is customary prior to closing of the active season. The upper story, including the tower, hall and stairway, had previously been cleaned, and the day being an exceptionally pleasant one, instructions were given the crew to clean the kitchen. Consequently, everything movable, excepting the large kitchen table, had been taken from the room, and also everything from the pantry. Two carpenter's horses and two planks had been brought into the former room and made into a stage in order that the top ceiling might be easily reached for cleaning and painting.

It was the intention of the keeper to put a preliminary coat of shellac on the ceiling before painting it, and also to put a composite dressing on the floors, composed of old candied or congealed paint oil and hard oil stewed together (a combination he has used successfully many times before).

Surfmen Casey and Campbell were on the stage tacking up old condemned blankets to protect the wainscoting (which is over 5 feet high), while Surferman James was on the floor securing the lower edge of the blankets. This was about 9 o'clock, or a little before, in the morning.

There was also on the stage two pots of shellac partially filled ready for use; the balance being in the original can on the floor, tightly corked.

The keeper, in the meantime, was attending to the mixture of the combination for the floor he was cooking on the kitchen stove. He intended to add a little more hard oil to the floor dressing, and by mistake picked up the half-empty can of shellac. The instant he removed the cork from the can the fumes of gas from it ignited, it is supposed by the heat from the top front door of the stove (that was open) causing a combustion, setting fire to the pot of floor dressing on the stove and the two pots of shellac on the stage, and completely filling the room with flames of fire, catching also the heavy-coated wainscoting on all sides of the room.

The keeper was successful in driving the stopple back again into the can of shellac, and after setting it down again upon the floor grabbed the burning kettle of floor dressing from the stove and undertook to throw it out of the west door through the storm clothing room (a porch that had been closed in in order to make a room for storm clothing), setting on fire that room that was filled with storm clothes, rubber boots, etc.

The keeper by this time was a statue of fire and surrounded by it on all sides; still he stood to his post and made for the "Underwriters' fire extinguisher" that is kept on the high kitchen shelf at the left of the cooking range but a few feet away. This he found by groping for it in the blinding smoke and flames and began fighting the fire with it while engulfed by the flames as they parched his bare face, neck, and hands.

In the meantime the three surfmen had escaped through the east door opening into the boat room, where a row of a dozen or more fire buckets were filled with water in readiness and commenced fighting the fire from that quarter. Soon as the buckets had been emptied they closed the door (which was to leeward) and ran to the west door (which opens into the storm clothing room) and began fighting the fire from that side that was burning lively, forming a bucket line to the ocean some 30 feet distance from the doorway, and using the hose and force pumps connected with the cistern.

In the meantime the keeper bravely stood at his post, suffering torture beyond expression, until he extinguished the fire in the kitchen with the extinguisher. He then ran with it around the station to the west door (in a mass of flames) and into the storm clothing room (size 8 feet by 8 feet 3 inches by 8 feet 8 inches high), where he stood in the center of the fire and extinguished it in that room, while the crew threw buckets of water on his body.

In the meantime Surfman Casey had telephoned to the city to the chief of the fire department for assistance, who immediately responded with three engines, arriving at the station within twenty minutes, but too late as the fire had been extinguished.

The fire lasted probably fifteen minutes before subdued or gotten under control. It was confined principally to the kitchen, pantry, and storm clothing room, which are considerably burned and charred. The compression in the kitchen, caused by the flames and heat forced the blaze and smoke through the doors leading into the hallway to the stairs and boat room, but only damaged the door casings in those rooms. Each of the three rooms damaged will need new doors, windows, ceilings, etc., throughout.

As mentioned above, everything in the pantry had been previously removed for cleaning that room. Had the shelves been covered with paper, as they usually are, the damage to that room would have been much worse.

Four fishermen from Capt. Commer Easterbrooke's trap fishing gang (near by) rendered valuable assistance in working the force pump and in passing buckets of water.

I will also add that a blind musician, of about 200 weight, was visiting friends at the station, and at the time of the cry of fire was in the crew's quarters up stairs. He was rescued by the station cook, who took him out of an upstairs window in his arms and carried him down the station ladder to a place of safety.

All of the storm clothing (a dozen suits or more) and many pairs of rubber boots that were in the storm clothing room were destroyed. When the outside door to this room was opened by the fire-bucket line for action, the flames were so great that they were forced against the wind with such heat that the galvanized gutter over the door was melted, and were the same when the keeper rushed into the same door (himself ablaze) with the extinguisher to put the fire out, which he did, and also the fire in the pantry.

It seems almost incredible that a human being could have endured it, but such is a fact. Only for his superhuman efforts and unflinching bravery the station and apparatus would have been a total loss.

It seems to me that the origin of the fire was merely an accident that might occur under such conditions by persons using great precaution.

I can not estimate the probable cost of repairs, but recommend that an assistant superintendent of construction be sent to the station as soon as practicable to look after the repairs. The rooms, though badly scorched and charred, are being used, the floors being in good shape.

In conclusion, will state that the station was saved from total destruction by the "Underwriters' fire extinguisher," in the hands of the right person, whose bravery in this case is commendable more than I can express by pen. Had the station burned he would have died a hero at his post.

We cared for his sufferings all night, and when I left the station at 9 a. m. this morning he was totally blind. His face, neck, and hands are terribly swollen, the latter being as large as boxing gloves. He certainly presents the worst-looking specimen of humanity I ever saw; still, the doctors think he will fully recover in due time.

Soon as the fire had been extinguished he telephoned to the city for an agent of the extinguisher to come to the station and recharge it. I will add that the glass hand grenades were used in the storm clothing room, the result of which could not be ascertained, the room being at the time so compacted with flame and smoke.

I have frequently mentioned that a regular station fire drill ought to be established and should be adopted, and also more extinguishers.

Captain Kenyon, in speaking of putting out the fire, in his modest way said, "Tell Mr. Kimball the boys stood by me in this case and did their respective duties like men." He is a man the Service should feel proud of.

Very respectfully,

H. M. KNOWLES,
Superintendent Third Life-Saving District.

KEEPER DAVIS.

Capt. Walter H. Davis, keeper of the Watch Hill Life-Saving Station, was born in the town of Stonington, New London County, Conn., August 15, 1865, and was a fisherman by occupation.

He entered the Service at the Watch Hill Station as surfman No. 1 of the crew on October 20, 1886, and during the summer months (inactive season) was captain of a fishing vessel. He was promoted to the keepership of the station November 25, 1891 (succeeding Capt. John F. Nash, resigned), a position he now holds.

He has figured in perhaps nearly a hundred rescues, both in the vicinity of the station and those having occurred on the reefs about the eastern extremity of Fishers Island, in which many lives imperiled were saved.

He is energetic, and his twenty-one years of heroic work in the Service has brought him many favorable comments which are recognized by the public and officers of the Service. His character, courage, and qualifications are exceptional. Though but 42 years of age he has seen much of the Service, is a model keeper, and but few are his peer or can show a better record.

KEEPER LITTLEFIELD.

Capt. Amazon N. Littlefield was born on Block Island February 28, 1843. He entered the Life-Saving Service November 15, 1876, as surfman No. 6 at the New Shoreham Station, and later was promoted to the position of No. 1. He was also promoted to the keepership of the same station August 3, 1889, during which time he has taken part in more than a hundred different disasters, and while in command was successful in many timely rescues, such as the saving of the crews of the *G. R. M. Mowry*, *Vamoose*, U. S. naval tug *Leyden*, and many others, as shown by records of the Service.

He is in his sixty-fifth year of his age. Though agile for a person of his age, his past services have earned him a retirement seat with the worthy and a liberal pension.

SUPERINTENDENT KNOWLES.

Capt. H. M. Knowles, of Wakefield, R. I., superintendent of the third life-saving district, was born on Point Judith, Rhode Island, near the light-house, March 26, 1856, and up to the time he entered the Life-Saving Service was a surf fisherman, sailor, and wrecker.

In 1876 when the life-saving station was established at Point Judith he resigned a position as mate of a coaster schooner and went on duty November 15 that year as surfman No. 1 of the original crew, at a compensation of \$40 per month (\$1.33½ per day).

In December, 1878, he was promoted to the keepership of the Point Judith Life-Saving Station at \$400 per year, a position he held until August, 1899, when he was promoted to the position of assistant district superintendent (succeeding the late Capt. John Waters) at \$1,000 per year. Later he was promoted to the position of district superintendent in 1900, at \$1,600 per annum, a position he now holds.

He has already served in these various positions (which he earned by merit) more than thirty-one years in the Service, during which time he has figured in more wrecks and had more rough experiences than any life-saver in the district, or perhaps on the Atlantic seaboard, having taken from wrecks more than one hundred persons in one year.

His special knowledge of boats and general workings of the Service was specially recognized by the Secretary of the Treasury in the spring of 1890, when he was appointed a member of the board on life-saving appliances, of which he is still a member.

He was detailed to take charge of the national life-saving exhibit at the Trans-Mississippi Exposition, held at Omaha, Nebr., in 1898. In this, like all other of his undertakings, he was a perfect success. He was the originator of the capsized life-boat drill, so popular and interesting at other expositions.

About 1900 his valued services were further recognized by the Secretary of the Treasury, who appointed him a member of a special committee of five to inquire into the feasibility of establishing mechanical power for propulsion of surf and life boats.

In connection with his regular duties as district officer, he helped build the seventy or more miles of telephone line connecting the stations in his district, and for sixteen years or more kept them in repair as long as his official duties would permit, thus saving the Service the expense of a telephone lineman for sixteen or more years.

The terrible exposure experienced by this officer in the faithful discharge of his various duties has greatly impaired his hearing, which grows worse, and in a few years will deprive him of all sense of hearing.

The small salaries paid this efficient officer after serving the Service thirty-one years, as shown by records, together with broken health and loss of hearing, entitles him to special recognition of Congress by placing him on waiting orders or permanent retirement.

SURFMAN MITCHELL.

Surfman Charles H. Mitchell, surfman No. 1 of the Block Island life-saving crew, was born on the island March 2, 1855.

He entered the Service at the Block Island Station (west side of the island) September 1, 1887, since which time he has taken an active part in more than one hundred wrecks of nearly every description that are forced ashore on that part of the island, imperiling the lives of several hundred.

In his early life he was a shore fisherman, and the type of surfmen that made up the crews at the stations in the early eighties.

His qualifications as a surfman in connection with his willingness to faithfully perform all duties assigned to him, together with services of the past should be recognized by Congress. A person at his age (52) afflicted with rheumatism, with a family to support, bearing the record he does, is worthy of special recognition by all fair-minded persons.

OFFICE SUPERINTENDENT THIRD LIFE-SAVING DISTRICT,
Wakefield, R. I., February 11, 1908.

Revised list of wrecks and casualties that have occurred within the limits of the Third Life-Saving District (coast of Rhode Island and Fishers Island), compiled from memory and records of the Life-Saving Service.

Date.	Vessel.	Location.	Casualty.
1752.....	Ship Palatine.....	Sandy Point, Block Island...	Wrecked.
	Brig Halifax.....	Grove Point, Block Island...	Do.
1755.....	Sloop Martha and Hannah...	Block Island.....	Do.
1780.....	Brig Golden Grove.....	do.....	Do.
1781.....	Ship Mars.....	do.....	Do.
1815.....	Ship Ann Hope.....	do.....	Do.
April, 1831.....	Schooner Warrior.....	Sandy Point, Block Island...	Do.
Fall of 1838.....	Brigantine J. Palmer.....	Beaver Tail.....	Heavy east gale; lost.
Nov. 25, 1846.....	Steamer Atlantic.....	Fishers Island.....	Wrecked.
Fall of 1852.....	Schooner Fellowship.....	Hulls Cove.....	Unknown; lost.
Fall of 1853.....	Schooner.....	Mackerel Cove.....	Driven ashore; lost.
1853-4.....	Brigantine Lemontine.....	Beaver Tail.....	Heavy east gale; lost.
1855.....	Brigantine Moluncus.....	Block Island.....	Wrecked.
	Schooner Silas Wright.....	Narragansett Pier.....	Do.
	Schooner Nelson Harvey.....	Near Whale Rock.....	Run down.
	Schooner Joseph C. Baxter.....	Fishing rocks.....	Wrecked.
	British ship George Walker.....	Point Judith.....	Stranded.
	Schooner William H. Tierce.....	do.....	Wrecked.
	Schooner Helen L. Smith.....	do.....	Stranded.
	Schooner Emma Bacon.....	do.....	Do.
	Schooner Ella.....	do.....	Do.
	Schooner Adalaide.....	do.....	Do.
	Schooner North State.....	do.....	Wrecked.
	Schooner Eastern Star.....	do.....	Stranded.
	Schooner Tyral.....	do.....	Wrecked.
	Sloop Elizabeth.....	North of Point Judith.....	Do.
	Fishing smack (no name).....	do.....	Stranded.
	British brig Re wood.....	do.....	Do.
	British brig Waywood.....	West of Point Judith.....	Do.
	Steamer Oceanus.....	Point Judith.....	Broke water pipe.
	Schooner Mary E. McHale.....	Quonochontaug.....	Wrecked.
	Schooner Isaac Webb.....	Noyes Beach.....	Do.
	Schooner Ere.....	do.....	Do.
	Brigantine A. H. Bowman.....	Point Judith.....	Leak; rolled over.
	Schooner Alida.....	do.....	Leak; sunk.
	Propeller.....	Green Hill.....	Exploded boiler; wrecked.
Winter of 1860.....	Schooner Target.....	Kettle Bottom.....	Snowstorm; lost.
Apr. 7, 1862.....	British brig.....	Near Point Judith.....	Fog; stranded.
Apr. 16, 1862.....	British.....	do.....	Snow; stranded.
June 30, 1862.....	Schooner Independence.....	North of Point Judith.....	Fog; stranded.
Aug. 9, 1863.....	Steamer Commodore.....	do.....	Do.
Apr. 30, 1864.....	Schooner Amelia.....	Near Point Judith.....	Fog; wrecked.
June 8, 1864.....	Brig Normany.....	do.....	Do.
Summer of 1864.....	Schooner Mary.....	Lions Head.....	Fog; lost.
Dec. 27, 1866.....	Barkentine C. B. Hamilton.....	Near Point Judith light.....	Fog; wrecked.
Winter of 1866.....	Sloop Motto.....	Beaver Tail.....	Forced ashore; ice.
Summer of 1869.....	Schooner.....	Kettle Bottom.....	Fog; lost.
June 8, 1869.....	Schooner Sarah L.....	Near Point Judith light.....	Fog; wrecked.
Winter of 1869.....	Schooner Chas. E. Raymond.....	Beaver Tail.....	Thick snowstorm.
Sept. 8, 1869.....	Schooner Spray.....	Narragansett Pier.....	Terrific storm.
Dec. 2, 1869.....	Brig Meteor.....	West of Point Judith.....	Fog; wrecked.
Winter of 1869.....	Schooner Ezra H. Day.....	Whale Rock.....	Thick; ashore; lost.
Apr., 1870.....	Schooner Sarah Graham.....	Beaver Tail.....	Misstayd; went ashore.
June 21, 1870.....	Schooner American Eagle.....	South of Point Judith.....	Stranded.

Revised list of wrecks and casualties that have occurred within the limits of the Third Life-Saving District (coast of Rhode Island and Fishers Island), compiled from memory and records of the Life-Saving Service—Continued.

Date.	Vessel.	Location.	Casualty.
July, 1870.....	Schooner Estella Day.....	Beaver Tail.....	Fog; stranded.
Aug. 10, 1870.....	Steamer Acusinet.....	West of Point Judith.....	Do.
Fall of 1870.....	Bark.....	Franklin Hollow.....	Sprung a leak.
Aug. 30, 1872.....	Steamer Metis.....	Off Watch Hill.....	Sunk by collision with schooner Nettle Cushing; forty or more lost.
Apr., 1873.....	Brig Lamontine.....	Short Beaver Tail.....	Mistayed in gale.
June 29, 1873.....	Schooner Immogene Diverty.....	West of Point Judith.....	Fog; stranded.
Jan. 26, 1874.....	Schooner Harriet Lewis.....	Beaver Tail.....	Mistayed; wrecked.
Feb. 19, 1874.....	Schooner Express Tilton.....	do.....	Do.
Spring of 1874.....	Schooner Wind.....	West Bay.....	Run into by steamer.
June 1, 1874.....	Schooner John Morris.....	Dickens Reef of Narragansett.....	Mistayed; wrecked.
Jan. 12, 1875.....	Schooner Laura Messer.....	Sandy Point, Block Island.....	Mistook light.
Jan. 25, 1875.....	Schooner Henry W.....	South of Point Judith.....	Snow; stranded.
Do.....	Schooner Henry H. Seavy.....	do.....	Too close; stranded.
June 12, 1875.....	Schooner Victoria.....	Marsh Cove, Point Judith.....	Fog; stranded.
June 23, 1875.....	Schooner Anna R. Eaton.....	Kent Swamp, Block Island.....	Do.
Summer of 1875.....	Schooner David and Benjamin.....	Beaver Tail.....	Went on rocks.
Sept. 4, 1875.....	Schooner Minnie Kinnie.....	West of Point Judith.....	Fog; stranded.
Nov. 19, 1875.....	Schooner Robin.....	Whale Rock.....	Fog; wrecked.
Spring of 1876.....	Schooner Caroline and Cornelia.....	Short Beaver Tail.....	Stranded; lost.
May 27, 1876.....	Schooner Henry J. May.....	Southwest point of Block Island.....	Fog; stranded.
Do.....	Schooner Catherine W. May.....	do.....	Do.
July 18, 1876.....	Brig Matilda.....	South of Point Judith.....	Leaking; stranded. †
Summer of 1876.....	Schooner Alfred Hurdle.....	Lion Head.....	Driven ashore; lost.
Sept. 10, 1876.....	Schooner A. E. Sterns.....	Kent Swamp.....	Fog; stranded.
June 10, 1877.....	Schooner Caroline Meensle.....	South of Block Island.....	Fog; wrecked.
Do.....	Schooner L. M. Lamond.....	do.....	Do.
July 16, 1877.....	Schooner William S. Scull.....	Block Island.....	Do.
July 20, 1877.....	Schooner Bayduce.....	do.....	Do.
Aug., 1877.....	Schooner Venus.....	West of Point Judith.....	Do.
Jan. 4, 1878.....	Schooner Rachel Nanama.....	Narragansett Pier.....	Fog; stranded.
Aug. 14, 1878.....	Schooner Armestra.....	Whale Rock.....	Do.
Sept. 1, 1878.....	Schooner Rebecca H. Hudell.....	West Block Island.....	Do.
Fall of 1878.....	Schooner.....	Mackerel Cove.....	Fog; lost.
Jan. 3, 1879.....	Schooner E. A. Hooper.....	West Block Island.....	Vapor; wrecked.
May 12, 1879.....	Schooner Alexandra.....	do.....	Fog; wrecked.
May 17, 1879.....	Steamer Ashland.....	West Point Judith.....	Fog; stranded.
June 29, 1879.....	Schooner Artic.....	Stephens Cove, Block Island.....	Do.
Aug. 31, 1879.....	Schooner Pinzi.....	Harbor Neck Point, Block Island.....	Do.
Oct. 16, 1879.....	Schooner John Mago.....	Watch Hill Reef.....	Mistook buoy; stranded.
Nov. 18, 1879.....	Schooner Memento.....	do.....	Unmanageable; stranded.
Dec. 16, 1879.....	Catboat (no name).....	Harbor Neck Point, Block Island.....	Stranded.
Do.....	Brig Open Sea.....	Napatree Point.....	Lost bearing; sunk.
Mar. 19, 1880.....	Schooner.....	Catumb Reef, Watch Hill.....	Stranded.
Mar. 24, 1880.....	Catboat (no name).....	Napatree Point, Watch Hill.....	Northwest gale; stranded.
June 12, 1880.....	Schooner Illinois.....	West of Point Judith.....	Fog; wrecked.
Oct. 26, 1880.....	Schooner Joseph Fitch.....	Sugar Reef.....	Lost bearing; wrecked.
Nov. 16, 1880.....	Schooner Rhode Island.....	Bonnet Point, Narragansett.....	Wrecked.
Nov. 20, 1880.....	Schooner Paul and Thomas.....	Fishers Island.....	Lost bearing; sunk.
Dec. 1, 1880.....	Brig Nellie.....	do.....	Snow; sunk.
Feb. 12, 1881.....	Schooner Edward H. Norton.....	Narragansett Pier Beach.....	Stranded.
Mar. 30, 1881.....	Schooner Julia Elizabeth.....	Catumb Reef, Watch Hill.....	Lost bearing; stranded.
Apr. 30, 1881.....	Schooner Paladium.....	Southwest of Point Judith.....	Leaking; wrecked.
June 7, 1881.....	Schooner Sandalphin.....	Sugar Reef.....	Lost bearing; stranded.
Aug. 6, 1881.....	Schooner Tillie E.....	Point Judith.....	Leaking; wrecked.
Sept. 8, 1881.....	Schooner Wave Crest.....	Black Rock, Block Island.....	Fog; stranded.
Nov. 10, 1881.....	Schooner Mary H. Stockham.....	Watch Hill Reef.....	Lost bearing; stranded.
Jan. 1, 1882.....	Schooner Sarah W. Blake.....	West of Point Judith.....	Run down; sunk; lost.
Jan. 3, 1882.....	Schooner.....	Mussel Bar, Watch Hill.....	Unknown; stranded.
Jan. 4, 1882.....	Schooner Mommouth.....	Watch Hill Reef.....	Lost bearing; stranded.
May 24, 1882.....	Schooner Silver Slide.....	Point Judith.....	Coast unknown; stranded.
Summer of 1882.....	Schooner Smith.....	Beaver Tail.....	Fog; lost.
Sept. 21, 1882.....	Schooner Lizzie Cochran.....	Point Judith.....	Great gale; stranded.
Oct. 12, 1882.....	Schooner Cuckoo.....	do.....	Do.

SURFMAN MITCHELL.

Surfman Charles H. Mitchell, surfman No. 1 of the Block Island life-saving crew, was born on the island March 2, 1855.

He entered the Service at the Block Island Station (west side of the island) September 1, 1887, since which time he has taken an active part in more than one hundred wrecks of nearly every description that are forced ashore on that part of the island, imperiling the lives of several hundred.

In his early life he was a shore fisherman, and the type of surfmen that made up the crews at the stations in the early eighties.

His qualifications as a surfman in connection with his willingness to faithfully perform all duties assigned to him, together with services of the past should be recognized by Congress. A person at his age (52) afflicted with rheumatism, with a family to support, bearing the record he does, is worthy of special recognition by all fair-minded persons.

OFFICE SUPERINTENDENT THIRD LIFE-SAVING DISTRICT,
Wakefield, R. I., February 11, 1908.

Revised list of wrecks and casualties that have occurred within the limits of the Third Life-Saving District (coast of Rhode Island and Fishers Island), compiled from memory and records of the Life-Saving Service.

Date.	Vessel.	Location.	Casualty.
1752.....	Ship Palatine.....	Sandy Point, Block Island...	Wrecked.
	Brig Halifax.....	Grove Point, Block Island...	Do.
1755.....	Sloop Martha and Hannah...	Block Island.....	Do.
1780.....	Brig Golden Grove.....	do.....	Do.
1781.....	Ship Mars.....	do.....	Do.
1815.....	Ship Ann Hope.....	do.....	Do.
April, 1831.....	Schooner Warrior.....	Sandy Point, Block Island...	Do.
Fall of 1838.....	Brigantine J. Palmer.....	Beaver Tail.....	Heavy east gale; lost.
Nov. 25, 1846.....	Steamer Atlantic.....	Fishers Island.....	Wrecked.
Fall of 1852.....	Schooner Fellowship.....	Hulls Cove.....	Unknown; lost.
Fall of 1853.....	Schooner.....	Mackerel Cove.....	Driven ashore; lost.
1853-4.....	Brigantine Lemontine.....	Beaver Tail.....	Heavy east gale; lost.
1855.....	Brigantine Moluncus.....	Block Island.....	Wrecked.
	Schooner Silas Wright.....	Narragansett Pier.....	Do.
	Schooner Nelson Harvey.....	Near Whale Rock.....	Run down.
	Schooner Joseph C. Baxter.....	Fishing rocks.....	Wrecked.
	British ship George Walker.....	Point Judith.....	Stranded.
	Schooner William H. Tierce.....	do.....	Wrecked.
	Schooner Helen L. Smith.....	do.....	Stranded.
	Schooner Emma Bacon.....	do.....	Do.
	Schooner Ella.....	do.....	Do.
	Schooner Adalaide.....	do.....	Do.
	Schooner North State.....	do.....	Wrecked.
	Schooner Eastern Star.....	do.....	Stranded.
	Schooner Tyral.....	do.....	Wrecked.
	Sloop Elizabeth.....	North of Point Judith.....	Do.
	Fishing smack (no name).....	do.....	Stranded.
	British brig Re wood.....	do.....	Do.
	British brig Waywood.....	West of Point Judith.....	Do.
	Steamer Oceanus.....	Point Judith.....	Broke water pipe.
	Schooner Mary E. McHale.....	Quonochontaug.....	Wrecked.
	Schooner Isaac Webb.....	Noyes Beach.....	Do.
	Schooner Ere.....	do.....	Do.
	Brigantine A. H. Bowman.....	Point Judith.....	Leak; rolled over.
	Schooner Alida.....	do.....	Leak; sunk.
	Propeller.....	Green Hill.....	Exploded boiler; wrecked.
Winter of 1860.....	Schooner Target.....	Kettle Bottom.....	Snowstorm; lost.
Apr. 7, 1862.....	British brig.....	Near Point Judith.....	Fog; stranded.
Apr. 16, 1862.....	British.....	do.....	Snow; stranded.
June 30, 1862.....	Schooner Independence.....	North of Point Judith.....	Fog; stranded.
Aug. 9, 1863.....	Steamer Commodore.....	do.....	Do.
Apr. 30, 1864.....	Schooner Amelia.....	Near Point Judith.....	Fog; wrecked.
June 8, 1864.....	Brig Normany.....	do.....	Do.
Summer of 1864.....	Schooner Mary.....	Lions Head.....	Fog; lost.
Dec. 27, 1866.....	Barkentine C. B. Hamilton.....	Near Point Judith light.....	Fog; wrecked.
Winter of 1866.....	Sloop Motto.....	Beaver Tail.....	Forced ashore; ice.
Summer of 1869.....	Schooner.....	Kettle Bottom.....	Fog; lost.
June 8, 1869.....	Schooner Sarah L.....	Near Point Judith light.....	Fog; wrecked.
Winter of 1869.....	Schooner Chas. E. Raymond.....	Beaver Tail.....	Thick snowstorm.
Sept. 8, 1869.....	Schooner Spray.....	Narragansett Pier.....	Terrific storm.
Dec. 2, 1869.....	Brig Meteor.....	West of Point Judith.....	Fog; wrecked.
Winter of 1869.....	Schooner Ezra H. Day.....	Whale Rock.....	Thick; ashore; lost.
Apr. 1870.....	Schooner Sarah Graham.....	Beaver Tail.....	Mistayed; went ashore.
June 21, 1870.....	Schooner American Eagle.....	South of Point Judith.....	Stranded.

Revised list of wrecks and casualties that have occurred within the limits of the Third Life-Saving District (coast of Rhode Island and Fishers Island), compiled from memory and records of the Life-Saving Service—Continued.

Date.	Vessel.	Location.	Casualty.
July, 1870.....	Schooner Estella Day	Beaver Tail.....	Fog; stranded.
Aug. 10, 1870....	Steamer Acuslonet	West of Point Judith.	Do.
Fall of 1870.....	Bark	Franklin Hollow.	Sprung a leak.
Aug. 30, 1872....	Steamer Metis	Off Watch Hill.....	Sunk by collision with schooner Nettle Cushing; forty or more lost.
Apr., 1873.....	Brig Lemontine	Short Beaver Tail.....	Mistayed in gale.
June 29, 1873....	Schooner Immogene Diverty.	West of Point Judith.	Fog; stranded.
Jan. 26, 1874....	Schooner Harriet Lewis	Beaver Tail.....	Mistayed; wrecked.
Feb. 19, 1874....	Schooner Express Tilton.	do	Do.
Spring of 1874..	Schooner Wind	West Bay	Run into by steamer.
June 1, 1874....	Schooner John Merris	Dickens Reef of Narragansett.	Mistayed; wrecked.
Jan. 12, 1875....	Schooner Laura Messer.	Sandy Point, Block Island.	Mistook light.
Jan. 25, 1875....	Schooner Henry W.	South of Point Judith.	Snow; stranded.
Do	Schooner Henry H. Seavy	do	Too close; stranded.
June 12, 1875....	Schooner Victoria	Marsh Cove, Point Judith.	Fog; stranded.
June 23, 1875....	Schooner Anna R. Eaton	Kent Swamp, Block Island.	Do.
Summer of 1875.	Schooner David and Benjamin.	Beaver Tail	Went on rocks.
Sept. 4, 1875....	Schooner Minnie Kinnie	West of Point Judith.	Fog; stranded.
Nov. 19, 1875....	Schooner Robin	Whale Rock	Fog; wrecked.
Spring of 1876	Schooner Caroline and Cornelia.	Short Beaver Tail.....	Stranded; lost.
May 27, 1876....	Schooner Henry J. May	Southwest point of Block Island.	Fog; stranded.
Do	Schooner Catherine W. May	do	Do.
July 18, 1876....	Brig Matilda	South of Point Judith.	Leaking; stranded. †
Summer of 1876.	Schooner Alfred Hurdle	Lion Head	Driven ashore; lost.
Sept. 10, 1876..	Schooner A. E. Sterns	Kent Swamp	Fog; stranded.
June 10, 1877....	Schooner Caroline Meensle.	South of Block Island	Fog; wrecked.
Do	Schooner L. M. Lamond.	do	Do.
July 16, 1877....	Schooner William S. Scull	Block Island	Do.
July 20, 1877....	Schooner Bayduce	do	Do.
Aug., 1877.....	Schooner Venus	West of Point Judith.	Do.
Jan. 4, 1878....	Schooner Rachel Nanama	Narragansett Pier	Fog; stranded.
Aug. 14, 1878....	Schooner Armestra	Whale Rock	Do.
Sept. 1, 1878....	Schooner Rebecca H. Hudell.	West Block Island.	Do.
Fall of 1878....	Schooner	Mackerel Cove	Fog; lost.
Jan. 3, 1879....	Schooner E. A. Hooper	West Block Island.	Vapor; wrecked.
May 12, 1879....	Schooner Alexandra	do	Fog; wrecked.
May 17, 1879....	Steamer Ashland	West Point Judith.	Fog; stranded.
June 29, 1879....	Schooner Artic	Stephens Cove, Block Island.	Do.
Aug. 31, 1879....	Schooner Pinzi	Harbor Neck Point, Block Island.	Do.
Oct. 16, 1879....	Schooner John Mago	Watch Hill Reef	Mistook buoy; stranded.
Nov. 18, 1879....	Schooner Memento	do	Unmanageable; stranded.
Dec. 16, 1879....	Catboat (no name)	Harbor Neck Point, Block Island.	Stranded.
Do	Brig Open Sea	Napatree Point	Lost bearing; sunk.
Mar. 19, 1880....	Schooner	Catumb Reef, Watch Hill.	Stranded.
Mar. 24, 1880....	Catboat (no name)	Napatree Point, Watch Hill.	Northwest gale; stranded.
June 12, 1880....	Schooner Illinois	West of Point Judith.	Fog; wrecked.
Oct. 26, 1880....	Schooner Joseph Fitch	Sugar Reef	Lost bearing; wrecked.
Nov. 16, 1880....	Schooner Rhode Island	Bonnet Point, Narragansett.	Wrecked.
Nov. 20, 1880....	Schooner Paul and Thomas.	Fishers Island	Lost bearing; sunk.
Dec. 1, 1880....	Brig Nellie	do	Snow; sunk.
Feb. 12, 1881....	Schooner Edward H. Norton.	Narragansett Pier Beach.	Stranded.
Mar. 30, 1881....	Schooner Julia Elizabeth	Catumb Reef, Watch Hill.	Lost bearing; stranded.
Apr. 30, 1881....	Schooner Paladium	Southwest of Point Judith.	Leaking; wrecked.
June 7, 1881....	Schooner Sadaulphin	Sugar Reef	Lost bearing; stranded.
Aug. 6, 1881....	Schooner Tillie E.	Point Judith	Leaking; wrecked.
Sept. 8, 1881....	Schooner Wave Crest	Black Rock, Block Island.	Fog; stranded.
Nov. 10, 1881....	Schooner Mary H. Stockham.	Watch Hill Reef	Lost bearing; stranded.
Jan. 1, 1882....	Schooner Sarah W. Blake	West of Point Judith.	Run down; sunk; lost.
Jan. 3, 1882....	Schooner	Mussel Bar, Watch Hill.	Unknown; stranded.
Jan. 4, 1882....	Schooner Mommouth	Watch Hill Reef	Lost bearing; stranded.
May 24, 1882....	Schooner Silver Slide	Point Judith	Coast unknown; stranded.
Summer of 1882.	Schooner Smith	Beaver Tail	Fog; lost.
Sept. 21, 1882....	Schooner Lizzie Cochran	Point Judith	Great gale; stranded.
Oct. 12, 1882....	Schooner Cuckoo	do	Do.

Revised list of wrecks and casualties that have occurred within the limits of the Third Life-Saving District (coast of Rhode Island and Fishers Island), compiled from memory and records of the Life-Saving Service—Continued.

Date.	Vessel.	Location.	Casualty.
Oct. 14, 1882...	Schooner Mary A. Fisher.....	East of Watch Hill.....	Lost rudder; stranded.
Oct. 15, 1882...	Barge Manhattan.....	do.....	Leaking; wrecked.
Nov. 27, 1882...	Schooner George Walker.....	Wicopasset Island.....	Lost bearing; stranded.
Jan. 10, 1883...	Schooner Bobb.....	Block Island.....	Mistayed; stranded.
Do.....	Schooner Snowy Daisy.....	do.....	Do.
Do.....	Schooner Convenient.....	do.....	Do.
Do.....	Steamer G. W. Danielson.....	do.....	Dragged anchor.
Jan. 13, 1883...	Schooner Thos. R. Pillsbury.....	Point Judith.....	Fog; stranded.
Feb. 11, 1883...	Schooner Chas. L. Mitchell.....	Fishers Island.....	Lost bearing; stranded.
Mar. 25, 1883...	Schooner Warren Gates.....	Judith Point.....	Capsized; sunk.
Apr. 4, 1883...	Schooner Franklin Pierce.....	Block Island.....	Mistayed; stranded.
Apr. 21, 1883...	Schooner Sarah Babcock.....	Fishers Island.....	Lost bearing; stranded.
Apr. 23, 1883...	Steamer Prof. Morse.....	North of Block Island.....	Fog; stranded.
Spring of 1883...	Schooner Strickland.....	Brenton Reef.....	Run down; lost.
June 5, 1883...	Schooner Emma K. Small.....	North of Block Island.....	Fog; stranded.
June 6, 1883...	Schooner C. B. Payne.....	Northwest of Block Island.....	Do.
June 28, 1883...	Schooner Annie Whiting.....	Southwest of Block Island.....	Fog; wrecked.
July 25, 1883...	Schooner William E. Lee.....	do.....	Fog; stranded.
Sept. 25, 1883...	Schooner Connecticut.....	East of Block Island.....	Dragged anchor; stranded.
Do.....	Scow (no name).....	Latimer Reef.....	Parted mooring; stranded.
Oct. 14, 1883...	Schooner Lavinia Campbell.....	Southwest of Block Island.....	Fog; stranded.
Oct. 16, 1883...	Schooner J. Kennedy.....	Sugar Reef.....	Lost bearing; stranded.
Oct. 29, 1883...	Schooner Vesta.....	Louis Point, Block Island.....	Rain; stranded.
Dec. 1, 1883...	Schooner J. Howell.....	Southwest of Block Island.....	Collision; stranded.
Dec. 19, 1883...	Brigantine Ellen Maria.....	Catumb Reef.....	Snowstorm; stranded.
Dec. 29, 1883...	Schooner Belle O'Neil.....	Beaver Tail.....	Thick weather.
Jan. 3, 1884...	Schooner Adrinna.....	West of Block Island.....	Sails blown away.
Jan. 9, 1884...	Schooner Island Belle.....	East of Block Island.....	Collision; stranded.
Do.....	Schooner Annie Godfrey.....	do.....	Do.
Do.....	Schooner Annie Steel.....	do.....	Do.
Feb. 2, 1884...	Schooner S. C. Noyes.....	do.....	Collision; sunk.
Feb. 20, 1884...	Schooner Annie Godfrey.....	do.....	Parted cable; stranded.
Do.....	Schooner Laura E. Gamage.....	do.....	Do.
Mar. 24, 1884...	Schooner Augusta.....	Lewis Point, Block Island.....	Fog; stranded.
Apr. 22, 1884...	Schooner Ada Herbert.....	East of Block Island.....	Parted jibstay; stranded.
May 10, 1884...	Schooner Julia A. Tate.....	Point Judith.....	Compass wrong; wrecked.
June 6, 1884...	Schooner Idlewild.....	Sand Hill Cove.....	Fog; stranded.
June 26, 1884...	Schooner Lacia Bell.....	North of Block Island.....	Lost bearing; stranded.
Aug. 2, 1884...	Schooner Marcena Mumford Jr.....	Beaver Tail.....	Stranded.
Aug. 19, 1884...	Schooner Wave.....	Watch Hill Point.....	Strong tide; stranded.
Oct. 5, 1884...	Sloop Hadley.....	Seal Rocks, Fishers Island.....	Lost bearing; stranded.
Oct. 16, 1884...	Sloop Favorite.....	East of Block Island.....	Collision.
Oct. 18, 1884...	Brigantine Guard.....	Watch Hill Race.....	Rocks; sunk.
Nov. 7, 1884...	Schooner Clarissa Allen.....	Stonington Point.....	Dragged anchor; sunk.
Jan. 11, 1885...	Schooner Vraie.....	Penninn Shoal, Watch Hill.....	Buoy out place; sunk.
Jan. 19, 1885...	Schooner Sarah Quinn.....	Fishers Island.....	Ran ashore; stranded.
Jan. 24, 1885...	Schooner Hope Haines.....	Catumb Reef.....	Fog; stranded.
Mar. 20, 1885...	Schooner Anna B. Jacobs.....	East of Block Island.....	Parted cable stranded.
May 26, 1885...	Schooner John A. Matheson.....	Sandy Point, Block Island.....	Fog; stranded.
June 5, 1885...	Schooner Lizzie B. Barker.....	East of Block Island.....	Parted cable stranded.
Do.....	Schooner William H. Oaks.....	do.....	Do.
Do.....	Schooner Lettie Linwood.....	do.....	Do.
July 20, 1885...	Schooner Josephine G. Gollyer.....	North of Block Island.....	Fog; stranded.
Aug. 4, 1885...	Schooner Eva Maud.....	Wicopasset Island.....	Do.
Aug. 9, 1885...	Schooner John Crockford.....	Mussel Bar, Watch Hill.....	Anchor broke; stranded.
Oct. 15, 1885...	Schooner Anthony Benton.....	East of Watch Hill Point.....	Collision; stranded.
Oct. 16, 1885...	Schooner Argo.....	Fishers Island.....	Lost bearing; stranded.
Nov. 5, 1885...	Schooner Almon Bacon.....	Point Judith.....	Leaking; sunk.
Nov. 30, 1885...	Schooner Mollie Porter.....	Catumb Reef.....	Lost bearing; stranded.
Dec. 7, 1885...	Schooner Fred A. Carl.....	Watch Hill Beach.....	Lost bearing; wrecked.
Dec. 25, 1885...	Schooner Mott Haven.....	Point Judith.....	Collision; sunk.
Do.....	Schooner Willie DeWolf.....	East of Block Island.....	Do.

Revised list of wrecks and casualties that have occurred within the limits of the Third Life-Saving District (coast of Rhode Island and Fishers Island), compiled from memory and records of the Life-Saving Service—Continued.

Date.	Vessel	Location.	Casualty.
Jan. 9, 1886.....	Schooner Cleo Chilcott.....	East of Watch Hill.....	Snow; wrecked.
Do.....	Schooner Allen Green.....	East of Point Judith.....	Ran ashore; stranded.
Feb. 6, 1886.....	Schooner Laura Lonn.....	East of Block Island.....	Ice; stranded.
Feb. 15, 1886.....	Schooner Lucy A. Blossom.....	Southeast of Watch Hill Point.....	Sunk.
Apr. 15, 1886.....	Schooner C. W. Lock.....	Napatree Point.....	Disabled; stranded.
May 5, 1886.....	Schooner Isabella Jewett.....	West Quagus Beach.....	Wrecked.
June, 1886.....	Schooner Bucco.....	Lions Head.....	Fog; lost.
June 20, 1886.....	Steamship Miranda.....	Point Judith.....	Too close; stranded.
July 6, 1886.....	Schooner Bertie Vierce.....	Southwest of Block Island.....	Fog; stranded.
Do.....	Schooner John Mann.....	West of Block Island.....	Lost bearing; stranded.
Aug. 17, 1886.....	Schooner Josephine B. Knowles.....	Napatree Point.....	Disabled; stranded.
Aug. 28, 1886.....	Schooner L. S. Livering.....	North of Block Island.....	Fog; stranded.
Aug. 31, 1886.....	Brigantine Bonanza.....	Watch Hill Race.....	Do.
Sept. 6, 1886.....	Schooner Annie Steel.....	Southwest of Block Island.....	Too close; stranded.
Sept. 23, 1886.....	Schooner Vicksburg.....	Catumb Rocks.....	Lost bearing; stranded.
Oct. 10, 1886.....	Schooner Wild Pigeon.....	East of Block Island.....	Mistayed; wrecked.
Nov. 25, 1886.....	Brig Toronto.....	Watch Hill Point.....	Thick; wrecked.
Dec. 1, 1886.....	Schooner Mary Natt.....	North of Point Judith.....	Leaking; sunk.
Feb. 1, 1887.....	Relief boat Bavaria.....	West of Block Island.....	Adrift; stranded.
Feb. 20, 1887.....	Schooner Harry A. Barry.....	South of Point Judith.....	Too close; wrecked.
Apr. 1, 1887.....	Schooner Path Finder.....	New Shoreham.....	Mistook light; wrecked.
Apr. 26, 1887.....	Schooner Dove.....	Bordens Reef, Newport.....	Mistayed; stranded.
Apr. 30, 1887.....	Ship Mary L. Cushing.....	West of Block Island.....	Rain; stranded.
May 8, 1887.....	Schooner Gardner Colby.....	South of Block Island.....	Fog; stranded.
June 6, 1887.....	Schooner Archilles.....	Lewis Point, Block Island.....	Do.
June 22, 1887.....	Brigantine Georgette.....	West of Block Island.....	Do.
July 9, 1887.....	Skin shell boat.....	North of Point Judith.....	Do.
Aug. 4, 1887.....	Schooner Jennie A. Cheney.....	East of Fishers Island.....	Mistayed; stranded.
Aug. 26, 1887.....	Schooner Ocean Spray.....	Block Island.....	Parted chain; stranded.
Sept. 2, 1887.....	Sloop Feesun.....	Watson Pier.....	Lost rudder; stranded.
Sept. 4, 1887.....	Boat (no name).....	Narragansett Pier.....	Liquor; stranded.
Sept. 5, 1887.....	Schooner Glimpæ.....	Lower Pier Dock.....	Stranded.
Sept. 24, 1887.....	Schooner John Strout.....	Seal Rocks.....	Mistook light; stranded.
Oct. 1, 1887.....	Catboat (no name).....	Gooseberry Island, Newport.....	Capsized; stranded.
Oct. 3, 1887.....	Schooner Black Swan.....	New Shoreham.....	Coast unknown; stranded.
Oct. 21, 1887.....	Schooner Rose Brothers.....	do.....	Dragged anchor; stranded.
Do.....	Schooner Mystery.....	do.....	Do.
Do.....	Schooner Ida & Jane.....	do.....	Thick; stranded.
Nov. 4, 1887.....	Sloop Favorite.....	do.....	Dragged anchor; stranded.
Nov. 10, 1887.....	Schooner Maggie J. Smith.....	Bass Rocks, Narragansett.....	Mistook light.
Nov. 11, 1887.....	Schooner Hornet.....	New Shoreham.....	Mistayed; stranded.
Dec. 31, 1887.....	Schooner Mary A. Drury.....	Point Judith.....	Too close; stranded.
Jan. 2, 1888.....	Schooner William Jordan.....	Block Island.....	Thick; wrecked.
Jan. 26, 1888.....	Schooner Oakwoods.....	Narragansett Pier.....	Thick; stranded.
Feb. 9, 1888.....	Schooner John Teeney.....	New Shoreham.....	Wind scant; stranded.
Feb. 25, 1888.....	Schooner Josie Reeves.....	do.....	Do.
Mar. 3, 1888.....	Brig John Welsh, Jr.....	Point Judith.....	Too close; wrecked.
Mar. 23, 1888.....	Sloop (no name).....	Watch Hill.....	Struck rock; leaking.
Apr. 6, 1888.....	Schooner Artist.....	Napatree Point.....	Parted chain; stranded.
Apr. 12, 1888.....	Schooner Henry H. Olds.....	Northwest of Whale Rock.....	Struck; sunk; lost.
Apr. 14, 1888.....	Schooner Commodore.....	New Shoreham.....	Stranded.
Apr. 26, 1888.....	Schooner Plow Boy.....	Bartlett's Reef.....	Do.
May 2, 1888.....	Schooner Anita.....	Point Judith.....	Thick; stranded.
May 19, 1888.....	Schooner Annie G.....	East of Block Island.....	Do.
July 8, 1888.....	Schooner Meteor.....	West of Block Island.....	Run on anchor; stranded.
July 12, 1888.....	Schooner Nellie D. Vaughn.....	Narragansett Beach.....	Struck rock.
Aug. 13, 1888.....	Sloop Guenn.....	Napatree Point.....	Mismanagement.
Aug. 22, 1888.....	Schooner Earle P. Mason.....	Point Judith.....	Cyclone; stranded.
Sept. 3, 1888.....	Cat yacht Elaine.....	Billington Dock.....	Mistake in tide.
Sept. 9, 1888.....	Schooner Isaac H. Borden.....	Point Judith.....	Fog; wrecked.
Oct. 21, 1888.....	Scow (no name).....	Pettequamsett River.....	Parted tow line.
Oct. 24, 1888.....	Sloop Ellen B.....	Block Island.....	Parted cable; stranded.
Nov. 1, 1888.....	Rose Island light-house boat.....	Castle Hill, Newport.....	Capsized; stranded.
Nov. 13, 1888.....	Schooner Clifton.....	Meeting House Shoal.....	Mistook light; stranded.
Nov. 14, 1888.....	Yawl boat (no name).....	Graves Point, Newport.....	Not known.
Nov. 16, 1888.....	Cat rig (no name).....	Bridge River.....	Dragged anchor; sunk.

Revised list of wrecks and casualties that have occurred within the limits of the Third Life-Saving District (coast of Rhode Island and Fishers Island), compiled from memory and records of the Life-Saving Service—Continued.

Date.	Vessel.	Location.	Casualty.
Nov. 18, 1888	Schooner Nellie Eaton	Sturgeon Point	Stranded.
Nov. 27, 1888	Bark Alexander Campbell	Block Island	Leaking; sunk.
Dec. 31, 1888	Schooner Clifton	West of Point Judith	Thick; stranded.
June, 1889	Schooner John H. Sherwood	Watch Hill	Dense fog; ashore.
June 10, 1889	Steam Schooner-Yacht Vin- ita	Point Judith	Fog; stranded.
June 29, 1889	Steamship Crown Prince	Scarborough Beach	Do.
Aug. 3, 1889	Schooner Ella J. Little	Latimer Reef	Ashore.
Dec. 10, 1889	Schooner Daniel M. French	Napatree Point	Too close; stranded.
Dec. 18, 1889	Schooner Frank Herbert	Narragansett Pier	Do.
Jan. 6, 1890	Schooner Samuel C. Thorp	Southeast of Block Island	Do.
Jan. 12, 1890	Schooner Pocahontas	Black Rock, Block Island	Fog; wrecked.
Jan. 21, 1890	Tug Robert Lockhart	Napatree Point	Too close; stranded.
Apr. 13, 1890	Schooner Van Buren	New Shoreham	Dragged anchor; stranded.
May 4, 1890	Schooner P. F. Fredson	Old Schooner Point, Block Island	Fog; stranded.
May 15, 1890	Bark Lady of the Lake	Governors Point, Block Is- land	Fog; wrecked.
Aug. 24, 1890	Schooner Avenger	Watch Hill Reef	Run on reef; wrecked.
Aug. 27, 1890	Sloop Strauded	New Shoreham	Dragged anchor; stranded.
Sept. 25, 1890	Schooner F. A. Pike	Catumb Reef	Coast unknown; stranded.
Oct. 13, 1890	Schooner Douglas Haynes	Brentons Reef	Drifted ashore.
Do.	Schooner Ayr	Catumb Reef	Mistook light; strand- ed.
Dec. 3, 1890	Schooner Winnie Lang	Napatree Point	Parted chain; strand- ed.
Dec. 26, 1890	Schooner Bill Stowe	Narragansett Pier Beach	Snow storm; wrecked.
Do.	Schooner A. H. Hurlburt	Narragansett Pier	Do.
Dec. 27, 1890	Schooner Carrie A. Lane	Napatree Point	Parted chain; wrecked.
Apr. 19, 1891	Ship Lydia Skolfield	Ragged Point Newport	Fog; wrecked.
July 18, 1891	Schooner A. T. Boardman	North of Block Island	Do.
Aug. 9, 1891	Schooner Sunshine	Watch Hill Point	Do.
Summer of 1891	Schooner Acorn	Old Newton	Fog; ashore.
Oct. 21, 1891	Cat rig, Always Ready	New Shoreham	Boom broke; strand- ed.
Oct. 23, 1891	Sloop Yankee Bride	do.	Parted cable; strand- ed.
Do.	Schooner Rose Brothers	do.	Dragged anchor; stranded.
Nov. 7, 1891	Sloop (no name)	Pettequamsett River	Heavy surf; stranded.
Dec. 4, 1891	Schooner Eddie H. Weeks	Block Island	Dragged anchor; stranded.
Dec. 9, 1891	Schooner John Proctor	Wicopesset Island	Mistook light; strand- ed.
Dec. 11, 1891	Schooner Alice M. Ridgeway	Watch Hill Beach	Leaking; stranded.
Dec. 25, 1891	Schooner Maggie Cummins	Napatree Point	Too close; stranded.
Mar. 23, 1892	Schooner Harry White	Quonochontaug	Collision; sunk; lost.
June 19, 1892	Tug Mars	Point Judith	Fog; stranded.
Do.	Brig Nereus	do.	Do.
July 3, 1892	Catboat Falcon	do.	Swamped; sunk.
July 24, 1892	Tug S. Thomas Brown	Watch Hill Point	Too close; stranded.
Oct. 2, 1892	Sloop Fashion	Southwest of Fort Adams	Mistayed; sunk.
Nov. 20, 1892	Schooner Vandalia	Watch Hill Race	Too close; stranded.
Nov. 29, 1892	Schooner Ranger	New Shoreham	Parted chain; strand- ed.
Feb. 10, 1893	Schooner John Paull	Green Hill Point	Fog; wrecked.
Do.	Schooner East Wind	Point Judith	Thick; wrecked.
Feb. 13, 1893	Brig Highlander	Fishers Island	Heavy storm; lost.
Feb. 20, 1893	Brigantine Reliance	Southwest of Block Island	Cut tow line; lost.
Feb. 26, 1893	Schooner Menuncatuck	Watch Hill Bend	Scuttled; on fire.
Mar. 2, 1893	Schooner Arvesta	Dickens Reef	Bad steering; stranded.
May 24, 1893	Schooner Oliver Chase	Point Judith	Leaking; sunk.
Aug. 21, 1893	Sloop Mary	New Shoreham	Dragged anchor.
Do.	Sloop Parole	do.	Parted cable.
Do.	Sloop Ethel Swift	North of Bonnet Point	Parted tow line; lost.
Aug. 24, 1893	Schooner Rapidan	Narragansett Pier	Parted tow line; wrecked.
Do.	Schooner Rapidan, pontoon No. 1.	do.	Do.
Do.	Schooner Rapidan, pontoon No. 2.	do.	Do.
Do.	Schooner Rapidan, pontoon No. 3.	do.	Do.
Do.	Schooner Rapidan, pontoon No. 4.	do.	Do.
Do.	Schooner Multonomah	New Shoreham	Dragged anchor.
Aug. 28, 1893	Schooner Priscilla	Napatree Point	Fog; stranded.

Revised list of wrecks and casualties that have occurred within the limits of the Third Life-Saving District (coast of Rhode Island and Fishers Island), compiled from memory and records of the Life-Saving Service—Continued.

Date.	Vessel.	Location	Casualty.
Sept. 11, 1893	Sloop Charmer	Pettequamsett River	Wind; stranded.
Nov. 9, 1893	Schooner E. F. Gammage	New Shoreham	Collision; stranded.
Dec. 5, 1893	Schooner Wm. G. R. Mowry	Northeast of Block Island	Snow, hail; wrecked.
Feb. 18, 1894	Schooner James Ives	Sand Hill Cove	Thick; stranded.
Mar. 10, 1894	Brig Nellie Pickup	New Shoreham	Mistook lights.
Apr. 11, 1894	Schooner Earl V. Nettie	Block Island	Dragged anchor.
May 5, 1894	Sloop Jennie	Point Judith	Fog; stranded.
May 6, 1894	Schooner Bradford C. French	Dickens Point, Block Island	Thick; stranded.
May 30, 1894	Schooner John W. Smart	Catumb Reef	Anchor broke.
July 14, 1894	Catboat (no name)	Quonochontaug Breach	Run ashore; stranded.
Aug. 14, 1894	Schooner J. G. Pierson	New Shoreham	Parted chain; stranded.
Sept. 3, 1894	Schooner Fannie Whitmore	Southeast of Noyes Breach	Dense air; stranded.
Oct. 10, 1894	Catboat Bessie Flske	New Shoreham	Parted chain; stranded.
Do	Sloop Lizzie	do	Do.
Do	Schooner Maria	do	Change of wind; stranded.
Do	Schooner Leonessa	South of Watson Pier	Parted cable; wrecked.
Do	Schooner L. C. Foster	Block Island	Mistook light; wrecked.
Do	Scow No. 15	Narragansett Pier	Heavy wind; wrecked.
Do	Scow No. 17	do	Do.
Do	Steam brigantine Megella	South of Point Judith	Do.
Oct. 21, 1894	Schooner Agricola	Napatree Point	Too close; wrecked.
Oct. 22, 1894	Schooner Allen	Fishers Island	Mistook light wrecked.
Nov. 2, 1894	Sloop Red Rover	North of Block Island	Run ashore; sunk.
Nov. 6, 1894	Schooner H. A. Dening	Watch Hill	Parted chain; stranded.
Do	Schooner Eddie H. Weeks	Block Island	Do.
Nov. 7, 1894	Sloop Edna	Sandy Point	Sand bar; stranded.
Dec. 27, 1894	Sloop Cassia	New Shoreham	Parted cable; stranded.
Do	Sloop Nettie	do	Do.
Jan. 13, 1895	Schooner Eva L. Leonard	Ragged Point, Newport	Snowstorm; stranded.
Apr. 27, 1895	Schooner G. E. Bentley	North of Block Island	Fog.
May 8, 1895	Catboat West Wind	Spouting Rock Point	Fog; stranded.
June 2, 1895	Schooner Jennie	Quonochontaug	Thick; stranded.
June 11, 1895	Spanish steamer Olinda	Fishers Island	Thick fog; wrecked.
July 4, 1895	Sloop (no name)	Kenyons Beach	Dragged ashore; wrecked.
Aug. 6, 1895	Sloop Muriel	Watch Hill Beach	Liquor; wrecked.
Sept. 1, 1895	Schooner Brunhilde	Sugar Reef, Watch Hill	Cut on reef; wrecked.
Do	Sloop yacht Cora	Brentons Point	Too close; wrecked.
Sept. 28, 1895	Steam lighter Harry	East-southeast of Brenton Ship.	Blew boilers out.
Sept. 29, 1895	Schooner Josie F	Napatree Point	Too close; wrecked.
Oct. 4, 1895	Catboat (no name)	Castle Hill, Newport	Rock; wrecked.
Oct. 5, 1895	Schooner Evelyn	Block Island	Leaking; wrecked.
Oct. 25, 1895	Schooner Active	Old Beach, Block Island	Mistook channel.
Nov. 20, 1895	Schooner F. M. Allen	Napatree Point	Too close; stranded.
Nov. 29, 1895	Schooner Promised Safety	Brentons Point	Slipped anchor.
Jan. 10, 1896	Steamer Naverick	Marsh Cove, Point Judith	Thick; stranded.
Feb. 20, 1896	Schooner Belle R. Hull	Watch Hill	Leaking; wrecked.
Do	Brigantine Star of the East	East of Sand Hill Cove	Parted tow line.
Mar. 15, 1896	Schooner Clarissa Allen	Point Judith	Snow; wrecked.
Mar. 19, 1896	Brig Water Witch	Brenton Point	Thick; wrecked.
May 9, 1896	Skiff (no name)	Newport	Capsized; wrecked.
May 28, 1896	Schooner Warsteed	Quonochontaug	Leaking; wrecked.
June 13, 1896	Schooner Henry L. Wyman	East of Block Island	Mistook light.
July 30, 1896	Schooner Blue Jay	Point Judith	Thick; stranded.
Aug. 8, 1896	Schooner George A. Upton	Newport	Drifted ashore; stranded.
Aug. 25, 1896	Sloop Inez	New Shoreham	Lost bowsprit; stranded.
Sept. 9, 1896	Schooner Helen F. Whitten	Newport	Lost sails; stranded.
Do	Schooner Pawtuckaway	Point Judith	Collision.
Sept. 10, 1896	Schooner Lady of the Lake	New Shoreham	Thick; wrecked.
Do	Catboat (no name)	Point Judith	Northeast gale; sunk.
Sept. 12, 1896	Catboat Wavelet	do	Capsized.
Sept. 18, 1896	Schooner Emerald	New Shoreham	Strong tide; stranded.
Sept. 20, 1896	Schooner Bessie M. Devine	Block Island	Stranded.
Oct. 2, 1896	Schooner Lady of the Lake	do	Mistayed; stranded.
Oct. 7, 1896	Naphtha launch (no name)	Noyes Breach	Took in water; stranded.
Oct. 11, 1896	Schooner Angle	Dick Spring, Block Island	Dragged anchor; stranded.
Oct. 12, 1896	Sloop Rambler	New Shoreham	Parted cable.

Revised list of wrecks and casualties that have occurred within the limits of the Third Life-Saving District (coast of Rhode Island and Fishers Island), compiled from memory and records of the Life-Saving Service—Continued.

Date.	Vessel.	Location.	Casualty.
Oct. 17, 1896	Schooner Zephyr	North of Block Island	Misstayd; stranded.
Oct. 23, 1896	Schooner Maggie Abbot	Watch Hill Reef	Too close; wrecked.
Nov. 20, 1896	Sloop S. R. Parker	New Shoreham	Misstayd; wrecked.
Nov. 24, 1896	Schooner Four Brothers	Common Point Cove, Block Island.	Wrecked.
Dec. 16, 1896	Schooner Lady of the Lake	Block Island	Parted cable; wrecked.
Do	Sloop Sea Serpent	do	Filled water; wrecked.
Do	Sloop Sharon	New Shoreham	Parted cable; wrecked.
Feb. 3, 1897	Scow Ocean View	Block Island	Leaking; stranded.
Feb. 11, 1897	Schooner Cheehagan	East of Block Island	Too close; stranded.
June 5, 1897	Schooner S. S. Silvia	do	Thick; stranded.
June 30, 1897	Schooner H. M. Rowley	Block Island	Fog; stranded.
July 5, 1897	Launch Fayette	East of Watch Hill Point	Disabled; stranded.
July 9, 1897	Schooner Maria	East of Block Island	Fog; stranded.
Aug. 5, 1897	Launch Ramona	Watch Hill	Disabled; stranded.
Sept. 7, 1897	Sloop (no name)	Narragansett Pier	Mismanagement; stranded.
Oct. 2, 1897	Sloop Bess	Point Judith	Dismasted; stranded.
Oct. 24, 1897	Sloop Bannet	Narragansett Pier	Mismanagement; stranded.
Do	Catboat (no name)	do	Do.
Oct. 26, 1897	Schooner Mary A. Brown	West of Block Island	Harbor unknown; stranded.
Oct. 30, 1897	Schooner Coquette	New Shoreham	Sand bar; stranded.
Nov. 4, 1897	Schooner Edith Bean	do	Misstayd; stranded.
Do	Schooner Edward M. McLaughlin	Point Judith	Foundered; sunk.
Nov. 10, 1897	Schooner Arabell	Block Island	Parted cable; stranded.
Do	Sloop Valkyrie	do	Do.
Do	Sloop Anna M.	do	Do.
Nov. 11, 1897	Catboat (no name)	Price Neck, Newport	Parted mooring; stranded.
Do	Schooner Maud H. Dudley	Wicopasset Island	Mistook light; stranded.
Nov. 12, 1897	Catboat Carrie	Block Island	Parted chain sheet.
Nov. 15, 1897	Schooner Percy	do	Mistook beach; stranded.
Nov. 18, 1897	Schooner E. F. Gammage	do	Misstayd; stranded.
Dec. 20, 1897	Schooner L. T. Whitmore	Catumb Rocks	Mistook light; stranded.
Dec. 21, 1897	Schooner Edith Bean	Block Island	Snow storm; stranded.
Dec. 24, 1897	Schooner Earl and Nettle	New Shoreham	Dragged anchor; stranded.
Jan. 14, 1898	Schooner Mary A. Brown	do	Misstayd; stranded.
Apr. 5, 1898	Schooner Mary Ellen	Point Judith	Dismasted; sunk.
Apr. 10, 1898	Schooner Ava	Sandy Point	Strong tide; stranded.
Apr. 12, 1898	Schooner Four Brothers	New Shoreham	Misstayd; stranded.
Apr. 18, 1898	Catboat Ospray	Common Point Cove, Block Island.	Parted cable; stranded.
Apr. 19, 1898	Catboat Always Ready	Dick Spring, Block Island	Do.
May 8, 1898	Catboat Regina	Block Island	Dragged anchor; stranded.
May 12, 1898	Schooner Mary Miller	Sand Hill Cove	Leaking; stranded.
May 24, 1898	Schooner William Rill	Sandy Point	Mistook light; stranded.
May 25, 1898	Schooner Laurel	Catumb Reef	Lost bearing; stranded
Aug. 5, 1898	Relief boat (no name)	Pettequamsett River	Capsize.
Aug. 26, 1898	Schooner Actress	Brentons Point	Leaking; sunk.
Aug. 30, 1898	Steam scow Wrestler	New Shoreham	Blew out boiler.
Sept. 5, 1898	Steamer Lewiston	Point Judith	Fog; stranded.
Sept. 21, 1898	Schooner Irene	Mussel Bar, Watch Hill	Too close; stranded.
Oct. 3, 1898	Sloop Crocodile	Quonochontaug	Fog; wrecked.
Nov. 27, 1898	Schooner Rose Brothers	New Shoreham	Parted cable; wrecked.
Do	Schooner Lexington	Block Island	Mistook light; wrecked.
Do	Sloop Cassie	do	Parted cable; wrecked
Do	Sloop Nellie B.	do	Do.
Do	Schooner Arabell	do	Do.
Do	Sloop Valkyrie	do	Dragged down; stranded.
Do	Steamer G. W. Danielson	do	Do.
Do	Sloop Aloha	New Shoreham	Filled water; sunk.
Do	Schooner Percy	do	Collision.
Do	Catboat Strainger	Block Island	Parted cable; stranded.
Do	Sloop Anna Pitcher	do	Sunk.

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Nov. 27, 1898	Schooner Ira and Abby	Point Judith	Parted cable; stranded.
Do.	Schooner Agnes	do	Parted cable; sunk.
Do.	Barge John Harvey	do	Broke adrift; stranded.
Do.	Schooner Edward H. Smead	Block Island	Dragged ashore; stranded.
Dec. 5, 1898	Schooner Vamoose	Northeast of Block Island	Mistook light; wrecked.
Dec. 19, 1898	Schooner Jonathan Cone	Mussel Bar, Watch Hill	Too close; wrecked.
Jan. 10, 1899	Schooner Percy	Block Island	Mistayed; wrecked.
Jan. 19, 1899	Schooner J. G. Fell	Mussel Bar	Too close; stranded.
Jan. 20, 1899	Schooner Emily	Watch Hill	Disabled; stranded.
Feb. 15, 1899	Schooner Addie M. Anderson	North of Whale Rock light	Struck wreck; sunk.
July 9, 1899	Barge New Hampshire	do	Leaking; sunk.
Aug. 4, 1899	Schooner Benj. D. Prince	Short Beaver Tail	Too close; stranded.
Aug. 18, 1899	Smack Annie	Quonochontaug	Drifted ashore; stranded.
Aug. 19, 1899	Schooner Alma	New Shoreham	No wind; stranded.
Sept. 7, 1899	Sloop Ditto	Watch Hill	Dragged anchor; stranded.
Sept. 11, 1899	Sloop Sunny Side	New Shoreham	Do.
Nov. 4, 1899	Brig Plover	Sandy Point	Compass wrong; stranded.
Jan. 26, 1900	Nanset	East of Watch Hill	Severe weather; stranded.
Mar. 8, 1900	Schooner Annie E. Fowler	New Shoreham	Mistayed; stranded.
Apr. 11, 1900	Sloop Martha	Block Island	Do.
Apr. 29, 1900	Schooner Mail	Napatree Point	Do.
May 9, 1900	Schooner Storm King	Block Island	Storm; stranded.
Aug. 23, 1900	Schooner Shamrock	do	Mistake; stranded.
Oct. 17, 1900	Schooner Swallow	Point Judith	Dragged anchor; stranded.
Oct. 23, 1900	Schooner West Port	Brentons Point	Mistake; stranded.
Nov. 5, 1900	Fish boat (no name)	Quonochontaug	Caught in breakers; stranded.
Nov. 9, 1900	Sloop Martha	Block Island	Parted cable; stranded.
Nov. 10, 1900	Barge Hudson	Southwest of Block Island	Foundered.
Do.	Barge Robert I. Carter	do	Do.
Dec. 28, 1900	Schooner Percy	East of Block Island	High wind; foundered.
Mar. 31, 1901	Schooner George A. Pierce	Catumb Reef	Sails blown away.
May 23, 1901	Schooner Polar Wave	Clay Head, Block Island	Fog; stranded.
July 25, 1901	Sloop Swawa	Napatree Point	Too close; stranded.
Nov. 24, 1901	Schooner J. G. Fell	Point Judith	Leaking; sunk; lost.
Dec. 17, 1901	Schooner North Star	Block Island	Stranded.
Dec. 27, 1901	Schooner Rhode Island	Brentons Reef	Capsized; sunk.
Feb. 3, 1902	Schooner Ann Elizabeth	New Shoreham	Parted cable; stranded.
Mar. 5, 1902	Schooner Amanda E.	Point Judith	Lost sails; stranded.
Apr. 20, 1902	Sloop Lorna	Quonochontaug	Oil stove exploded.
June 16, 1902	Steamer L. L. Fedesen	New Shoreham	Fog; stranded.
July 7, 1902	Fish boat (no name)	Point Judith	Capsized; lost.
Aug. 2, 1902	Catboat Glance	Quonochontaug Pond	Do.
Aug. 3, 1902	Steam yacht Vulcan	do	Disabled.
Aug. 6, 1902	Sloop Genevieve	New Shoreham	Squall; stranded.
Aug. 8, 1902	Sloop Aerial	Quonochontaug	Mistayed; stranded.
Do.	Sloop Allison	Watch Hill	Beached her; stranded.
Aug. 12, 1902	Schooner Dauntless	Block Island	Leaking; stranded.
Sept. 9, 1902	Catboat Amella	Sandy Point	Fog; stranded.
Oct. 15, 1902	Schooner Kate and Mary	Quonochontaug	Mistayed; wrecked.
Jan. 19, 1903	Brigantine John J. Burlee	Watch Hill Point	Thick fog; wrecked.
Jan. 21, 1903	U. S. tug Leyden	New Shoreham	Do.
June 12, 1903	Sloop Opitsah	Quonochontaug	Unmanageable; wrecked.
June 25, 1903	Sloop Due	Block Island	Darkness; wrecked.
Aug. 30, 1903	Catboat Hartford	Quonochontaug Pond	Capsized.
Sept. 5, 1903	Schooner Jennie R. Dubois	New Shoreham	Shore unknown; wrecked.
Sept. 8, 1903	Sloop Curlew	Point Judith	Do.
Sept. 13, 1903	Schooner	do	Fog; stranded.
Sept. 15, 1903	Schooner Nora	Block Island	Parted towline.
Oct. 17, 1903	Schooner Dauntless	do	Do.
Dec. 7, 1903	Schooner Clara	Spindle Reef, Watch Hill	Too close; stranded.
Dec. 26, 1903	Brigantine Mackey	Sugar Reef, Watch Hill	Do.
Jan. 13, 1904	Schooner Gracie	Block Island	Stranded.
Mar. 7, 1904	Sloop Samuel B. Miller	Sandy Point	Do.
Mar. 26, 1904	Schooner Mabel Hall	Block Island	Do.
May 5, 1904	Sloop Sunny Side	do	Do.
June 5, 1904	Bark Elmarandy	do	Do.

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July 6, 1904.	Steamer George W. Humphrey.	Brenton Reef.	Stranded.
Aug. 17, 1904.	Sloop Narka.	Point Judith.	Do.
Sept. 4, 1904.	Sloop Julia E. Simmons.	Block Island.	Do.
Sept. 15, 1904.	Yawl Theresa.	do.	Do.
Sept. 5, 1904.	Schooner James L. Maloy.	Point Judith.	Do.
Do.	Cathoat Posidon.	do.	Sunk.
Do.	Sloop Bessie.	Block Island.	Stranded.
Do.	Sloop In Time.	do.	Do.
Do.	Sloop Lindsay.	do.	Do.
Oct. 3, 1904.	Launch Buffalo.	Noyes Breach.	Batteries wet.
Oct. 30, 1904.	Sloop Young American.	Brenton Point.	Sunk.
Nov. 3, 1904.	Launch Aria.	Point Judith.	Stranded.
Nov. 14, 1904.	Cathoat Laurence.	Block Island.	Do.
Dec. 17, 1904.	Cathoat Peggy.	do.	Sunk.
Dec. 18, 1904.	Steamer Conestoga.	Fishers Island.	Stranded.
Do.	Schooner-brigantine Shenandoah.	do.	Stranded (in tow).
Do.	Schooner-brigantine Pine Forest.	do.	Do.
Do.	Brigantine Alburtils.	do.	Stranded.
Jan. 24, 1905.	Schooner Marshall G. Wells.	Sugar Reef, Watch Hill.	Do.
Mar. 17, 1905.	Steamer J. B. Dallis.	Fishers Island.	Cyclone.
Mar. 19, 1905.	Steamer Spartan.	Block Island.	Stranded.
Apr. 6, 1905.	Barge Texas.	do.	Do.
Apr. 7, 1905.	Schooner George and Albert.	Brenton Point.	Stranded and sunk.
Apr. 11, 1905.	Power boat (no name).	Watch Hill.	Engine not working.
May 3, 1905.	Schooner Moonbeam.	Point Judith Reef.	Sunk.
May 18, 1905.	Schooner Arthur M. Gibson.	Clay Head, Block Island.	Stranded.
May 20, 1905.	Schooner Julia A. Bunkle.	Point Judith.	Do.
July 18, 1905.	Schooner L. M. Eaton.	do.	Burned; sunk.
Aug. 6, 1905.	Brigantine Bavaria.	Race Rock, Fishers Island.	Stranded.
Do.	Brigantine Bay View.	Fishers Island.	Do.
Do.	Brigantine Badger.	do.	Do.
Aug. 12, 1905.	Launch Viking.	Quonochontaug.	Do.
Aug. 17, 1905.	Sloop Lady Mary.	Fishers Island.	Do.
Aug. 29, 1905.	Barge Homedale.	Race Rock light.	Do.
Aug. 31, 1905.	Cathoat Lucy.	Narragansett Pier.	Do.
Oct. 13, 1905.	Cathoat Maid of the Mist.	Block Island.	Sunk.
Nov. 15, 1905.	Schooner James Parker, sr.	Brenton Reef.	Do.
Dec. 10, 1905.	Schooner Little Fred.	Block Island.	Stranded.
Dec. 16, 1905.	Steamer Blue Jay.	do.	Do.
Dec. 21, 1905.	Cathoat Castle May.	do.	Do.
Do.	Cathoat Laurence.	do.	Do.
Feb. 26, 1906.	Unrigged Edward J. Berwind.	do.	Sunk.
Feb. 28, 1906.	Sloop Ellen W.	do.	Sails blown away.
Mar. 4, 1906.	Schooner F. Townes.	Fort Adams.	Ashore.
Apr. 15, 1906.	Brigantine Bouquet.	Quonochontaug.	Sunk.
Apr. 22, 1906.	Bark Illiside.	Block Island.	Stranded.
May 27, 1906.	Brigantine Fannie.	do.	Do.
Do.	Schooner Cassie.	do.	Do.
June 10, 1906.	Schooner Theodore Palmer.	Point Judith.	Do.
July 1, 1906.	Schooner Charles H. Sprague.	Catumb Reef.	Do.
Do.	Sloop Moose.	Narragansett Pier.	Do.
July 4, 1906.	Sloop Alice.	Napatree Point.	Too close; stranded.
July 31, 1906.	Steamer G. W. Danielson.	Block Island.	Disabled.
Aug. 1, 1906.	Schooner Nero.	do.	Stranded.
Do.	Steamer Launch Alisa.	do.	Collision.
Aug. 3, 1906.	Schooner Filza Jane.	do.	Stranded.
Aug. 9, 1906.	Launch (no name).	Green Hill.	Sunk.
Aug. 15, 1906.	Schooner Maggie Todd.	Watch Hill Point.	Do.
Aug. 24, 1906.	Cathoat Dinah.	Fishers Island.	Stranded.
Aug. 30, 1906.	Schooner Clara E. Comeau.	Point Judith.	Do.
Sept. 5, 1906.	Sloop Auxiliary.	Brenton Point.	Sunk.
Do.	Launch Ninnegret.	Quonochontaug.	Capized.
Do.	Yawl Lotta.	Point Judith.	Stranded.
Oct. 3, 1906.	Power boat Lizzie A.	Watch Hill.	Broke down.
Nov. 15, 1906.	Schooner Lugano.	Point Judith.	Stranded; wrecked.
Nov. 26, 1906.	Schooner John Feeney.	Block Island.	Do.
Jan. 9, 1907.	Schooner Ellen Mitchell.	Fishers Island.	Stranded.
Do.	Schooner Emily Anderson.	do.	Do.
Jan. 10, 1907.	Unrigged Marvin.	Napatree Point.	Do.
Do.	Unrigged Honesdale.	do.	Do.
Do.	Unrigged Delaware.	do.	Do.
Jan. 21, 1907.	Barge Montana.	Block Island.	Sunk.
Feb. 2, 1907.	Steamer General Warren.	Dumpling.	Stranded.
Do.	Tug Richmond.	Newport.	Do.
Feb. 11, 1907.	Schooner Harry Knowiton.	Quonochontaug.	Collision; sunk.
Do.	Steamer Larchmont.	do.	Do.

Revised list of wrecks and casualties that have occurred within the limits of the Third Life-Saving District (coast of Rhode Island and Fishers Island), compiled from memory and records of the Life-Saving Service—Continued.

Date.	Vessel.	Location.	Casualty.
May 21, 1907....	Rowboat (no name).....	Narragansett Pier.....	Capsized.
May 31, 1907....	Power boat (no name).....	Clay Point, Fishers Island...	Feed pipe stopped up
July 8, 1907....	Torpedo rig Cavalier.....	Point Judith.....	Stranded.
July 16, 1907....	Steam yacht Nada.....	do.....	Do.
Aug. 14, 1907....	Barge H. H. Logue.....	Latimer Reef.....	Do.
Do.....	Sloop Armonal.....	Block Island.....	Do.
Aug. 20, 1907....	Schooner Albatross.....	Stub Tree Point.....	Do.
Sept. 4, 1907....	Barge Excelsior.....	Watch Hill Point.....	Do.
Do.....	Barge No. 701.....	do.....	Do.
Sept. 8, 1907....	Schooner Elmina.....	Watch Hill Race.....	Do.
Do.....	Launch Patrol.....	Quonochontaug.....	Adrift.
Sept. 29, 1907....	Schooner Laura E. Gammage.....	Seal Rock.....	Disabled.
Oct. 2, 1907....	Launch (no name).....	Latimer Reef.....	Drifting.
Oct. 8, 1907....	Barge Cassie.....	Castle Hill.....	Struck rock.
Oct. 10, 1907....	Schooner Nile.....	Watch Hill.....	Collision.
Oct. 12, 1907....	Sloop Annie.....	North of Block Island.....	Stranded.
Nov. 23, 1907....	Launch (no name).....	Fishers Island.....	Batteries poor.
Nov. 25, 1907....	Schooner Marsala.....	New Shoreham.....	Stranded.
Dec. 14, 1907....	Tug Hercules.....	Old Reef Point.....	Sunk.
Do.....	Barge Elk.....	Pleasant View Beach.....	Stranded.
Do.....	Barge James E. English.....	do.....	Do.
Do.....	Barge Alanson A. Summer.....	do.....	Do.
Do.....	Barge John C. Wyman.....	do.....	Do.
Dec. 30, 1907....	Barge Jennie.....	Point Judith.....	Do.
Do.....	Barge Ida.....	do.....	Sunk.
Jan. 7, 1908....	Barge Helen.....	Fishers Island.....	Stranded.
Do.....	Barge Julia.....	do.....	Do.

At 11.50 o'clock a. m. the committee went into executive session.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Thursday, February 20, 1908.

H. R. 15945.

PERSONNEL OF THE LIFE-SAVING SERVICE.

The committee met and were called to order at 10.30 o'clock a. m.

Present: Representatives Hepburn (chairman), Wanger, Mann, Lovering, Stevens, Esch Cushman, Townsend, Hubbard, Adamson, and Bartlett.

After discussing other matters, the committee proceeded to the further consideration of the bill (H. R. 15945) to increase the efficiency of the personnel of the Life-Saving Service of the United States.

Mr. LOVERING. Mr. Chairman, Captain Knowles, who appeared here day before yesterday, came unexpectedly and had not at the time seen the bill which is before the committee. He made some misstatements, or said some things which he did not intend to say, and would like to have an opportunity to correct them.

The CHAIRMAN. We will be glad to hear you, Captain.

ADDITIONAL STATEMENT OF H. M. KNOWLES.

Mr. KNOWLES. Mr. Chairman and gentlemen of the committee, I thank you for the opportunity to come before the committee to-day, for the reason that I do not see how a person could possibly be more

handicapped than I was the other day when I came before the committee. The train was late. It did not arrive until 10 o'clock, and I was in here in time for the committee meeting. Not until last night at a quarter to 5 had I seen a copy of this bill, when it was handed to me to examine.

On looking it over I was agreeably surprised to find the good features that the bill provides. I would like to say that so far as the working team of the Service is concerned, I think, as the result of close observation, that it reached its height of efficiency about 1898, since which time we have been losing our best and most valuable men. The system we have to work under is about as imperfect as it can be but our greatest loss is the men. The improvements we have been able to make from time to time have been of very great advantage to the Service, yet we feel the loss, most of all, of our working team. I do not think that it can possibly be claimed that any mechanical power for the propulsion of life-surf boats can be compared with a well-drilled and experienced crew. By that I mean when working between the shore and beyond the breakers, which is sometimes a third of a mile or something like that.

I have examined this bill closely, and I think I understand it pretty thoroughly now, although I did not the other day; and as a general bill I can see from the personnel standpoint that it will help a very great deal.

The CHAIRMAN. Do you suffer from defective hearing?

Mr. KNOWLES. Yes, sir. It is impossible for me to hear at all in this ear [indicating], and from a distance the length of this table the words in transit have a vibration and reaction on my eardrums so that I can not understand what is said.

The CHAIRMAN. Could you hear distinctly the queries that were put to you yesterday?

Mr. KNOWLES. No, sir; I could not hear any of the conversation in regard to this bill that occurred after I came here.

The CHAIRMAN. Well, I suppose that is a sufficient explanation.

Mr. MANN. What is the number one surfman?

Mr. KNOWLES. The number one surfman is supposed to be the best qualified man in the crew, in regard to character and qualification as a surfman, and general all-round man.

Mr. MANN. Is there just one at a station?

Mr. KNOWLES. One number one surfman; yes, sir. He takes the keeper's place when the keeper is absent. He commands the boat and has full charge of the station during the keeper's absence.

Mr. LOVERING. Don't you think an increase of pay all along the line, as provided for in this bill, is sufficient, and will meet all the troubles and difficulties that exist in your mind?

Mr. KNOWLES. I think the bill, as I understand it now, sir, is a big advantage, if that is what you mean.

Mr. LOVERING. No. I just mean about the increase of pay, so that you can get good men back in the Service, and leave the pension part of it off.

Mr. KNOWLES. I do not see how we can possibly do so, in view of the talks I have had in the past with the men. The men say the money is too easily spent, and the first thing you know it is gone.

But I was agreeably surprised when some gentleman at that end of the table the other day suggested the rations. That is some-

thing I had not heard until he spoke to me about it. That is a very good feature, and that will help very, very much.

I have with me a statement of the status of the personnel of my district, and their average age and average service, etc.

The CHAIRMAN. You can hand that to the stenographer.

Mr. KNOWLES. Yes, sir. I thank you very much, gentlemen, for this opportunity.

Mr. CAPRON. I would like to say, in regard to the average of which Captain Knowles has just spoken, that that statement shows the number of men in the stations in that district since 1898, and from that time on up; how many of the old men are now with the several stations, and how many have gone away; and it is a crucial test of the situation as regards keeping the oldest and best men. And it is to that feature that I would like to call your attention, because I was surprised to see how many of their best men have gone out of the Service.

The CHAIRMAN. Perhaps the committee would like to hear the statement read.

Mr. KNOWLES. I will read it. [Reads:]

Status of the personnel of the Third life-saving district, as shown by records of the Service to January 1, 1908, is as follows:

There are 9 fully equipped life-saving stations, the personnel of which is 1 district superintendent, 9 keepers, 58 surfmen, and 6 vacancies filled by temporary men.

The age of the district superintendent will be 52 years March 26, 1908, of which he has served 31 years, November 15, 1907, in the Service as surfman, keeper, assistant, and district superintendent, receiving \$40 per month, \$400 per annum, \$1,000 per annum, and \$1,600 per annum, respectively.

The average age of the keepers is 41½ years; their average number of years in the Service as surfmen and keepers is seventeen and five-ninths.

The average age of the surfmen is 32½ years; their average number of years in the Service is five and twelve-twenty-ninths.

Those that would be entitled to longevity of 10 per cent rise for each five years past services would be as follows:

	Per cent.		Per cent.
1 district superintendent.....	40	2 surfmen.....	40
4 keepers.....	40	4 surfmen.....	30
2 keepers.....	20	4 surfmen.....	20
3 keepers.....	10	14 surfmen.....	10

On a basis of \$65 a month (now paid a surfman) 10 per cent increase for each five years in the Service would amount to \$6.50.

The ones in my district that would be entitled to a 10 per cent increase for the past five years would be 3 keepers. The number of surfmen who would be entitled to a 10 per cent increase on five years' service would be 14—14 surfmen and 3 keepers.

The CHAIRMAN. Fourteen surfmen out of how many?

Mr. KNOWLES. Out of a complement of 64 men.

Mr. MANN. Not 64 keepers, is it?

The CHAIRMAN. No; surfmen.

Mr. KNOWLES. Surfmen; yes, sir. I wish to state, gentlemen, that what I said the other day and what I say to-day has relation only to my own district.

Mr. MANN. Have not all of your keepers been in the Service over five years?

Mr. KNOWLES. Those that have been—let me see, the average of them would be better; that would be seventeen years.

Mr. MANN. Have not all of the keepers been in the Service more than five years?

Mr. KNOWLES. Yes, sir. All of my keepers—that is, the nine—have been in the Service more than five years; yes, sir.

Mr. MANN. Then they would all be entitled to the 10 per cent increase?

Mr. KNOWLES. Yes, sir.

Mr. MANN. You made a mistake when you said only three would be entitled to the increase?

The CHAIRMAN. You meant 9 instead of 3?

Mr. KNOWLES. I beg your pardon. I meant 9; yes, sir. I have the percentages figured out here, and the manner in which they are figured led me to make the misstatement.

Mr. MANN. The keepers, as a rule, are surfmen promoted?

Mr. KNOWLES. Yes, sir; in all cases. The surfmen are promoted. And that is why I wished to state, Mr. Lovering, that your bill made a double promotion, in one sense of the word, which we have never had before in my experience. That is, it gives the No. 1 man a promotion above the other members of the crew and places him in line for promotion to keeper.

Mr. CAPRON. When I addressed the committee the other day I had reference to your good men who had gone out of the Service within the last seven or eight years.

Mr. KNOWLES. In regard to that I will refer to one or more stations in my district. I will first mention Fishers Island Station, which was manned somewhere about 1892. There is only one man left now out of that original crew. They were all young active fellows when they went in there. They have resigned, and I have but one man left. Perhaps I can save him by transferring him. He is on Fishers Island, an important station. He intends to get married, and I think by transferring him to some station nearer home that I will be able to save him.

At Sandy Point Station, on Block Island, which was manned in the winter of 1898 or 1899, perhaps January, 1899, or somewhere thereabouts, there is only one man now of that original crew. They were a model crew of young men. Every man who went on there had bright prospects of becoming an A No. 1 surfman. We have lost them all but one.

Mr. LOVERING. So that if they come back to you they would have to start as new men?

Mr. KNOWLES. Yes, sir.

Mr. LOVERING. The advantage of the former experience would not count so far as their receiving any additional pay?

Mr. KNOWLES. Those men, gentlemen, are young, active men. They have got experience now, already established, but in order to get their services, you understand, they would have to come on as new men and would receive the benefits of the rations which some gentleman suggested at the hearing the other day.

Mr. LOVERING. Would the ration allowance be satisfactory to them?

Mr. KNOWLES. That would all help; yes, sir.

Mr. RICHARDSON. Do you know whether the occupation of surfman is regarded by insurance companies as so hazardous that it would be impossible, or very difficult, to obtain life or accident insurance?

Mr. KNOWLES. Yes, sir; I have had a great deal of experience in that line through a job of work that I did on a British steamship.

I was appointed national underwriting agent in 1889 that took in all of the different companies in the United States, Switzerland, and all around; and I had a big set of books. But I had just been promoted, about two or three weeks before, and I had to give it up, because I felt in view of my promotion that I should stick to my profession. The underwriters' agent called on me and asked my advice, and in twenty minutes they had two tugboats dispatched on the way for material to work on, and in two years they had a steamer in Newport.

The CHAIRMAN. That does not answer your question.

Mr. WANGER. He is talking about life insurance.

Mr. KNOWLES. Oh, I beg your pardon. In regard to life insurance, I will say that I was the first life saver that had ever taken out an insurance policy in our section of the country, and that has been canceled since.

Mr. RICHARDSON. Canceled by you or by the company?

Mr. KNOWLES. In a way by my promotion. They did not want to take us on any more.

Mr. RICHARDSON. Will the life insurance companies or the accident-insurance companies insure surfmen?

Mr. KNOWLES. I do not think so.

Mr. RICHARDSON. Do you know anything about it?

Mr. KNOWLES. No, sir; I do not.

(Adjourned at 11.20 a. m.)

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

OF THE

HOUSE OF REPRESENTATIVES

ON

H. R. 13841

CAR SHORTAGE AND RECIPROCAL DEMURRAGE

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

THE CULBERSON-SMITH CAR AND TRANSPORTATION SERVICE BILL.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Saturday, February 15, 1908.

The meeting was called to order at 10.45 a. m., Hon. W. P. Hepburn in the chair.

STATEMENT OF MR. S. H. COWAN, REPRESENTING THE AMERICAN NATIONAL LIVE STOCK ASSOCIATION, HEADQUARTERS DENVER, COLO., AND CATTLE RAISERS' ASSOCIATION OF TEXAS, HEADQUARTERS FORT WORTH, TEX.

The CHAIRMAN. Mr. Cowan, this meeting was called at your suggestion in connection with the matter of the transportation service bill upon which you desire to be heard. You may take the lead in this matter, presenting the views of yourself and such gentlemen as may desire to be heard. You are probably aware, of course, that we will have to be brief, as we have no power to sit during the sessions of the House.

Mr. COWAN. Mr Chairman and gentlemen of the committee, we have prepared, in form which you find in front of you, the bill that we advocate to secure better railroad service in the matter of furnishing cars and in the transportation service, the object of those whom I represent being to avoid the enormous losses that have been happening, are continually happening, and will continually happen, without some penalties, in the transportation of live stock, particularly in that territory west of the Mississippi River.

The American National Live Stock Association represents substantially all of the organized live-stock people, including associations in Texas, Iowa, Kansas, Colorado, South Dakota, Montana, and various other States, as well as the Territories.

The Cattle Raisers' Association of Texas is an organization which represents particularly the cattle raisers of the Southwestern States, although it is not confined to that territory, having some 2,000 members, representing, I believe, probably 5,000,000 head of cattle.

You understand that the transportation of live stock is one of the most important means whereby the business is carried on, through the methods of transporting them from places of production to places of feeding and then to the markets. And being perishable, when ready for the market delay in the matter of furnishing cars or in the speed with which they are carried to the market causes loss which is serious, considering the accumulated labor of those who work for their living that way.

The CHAIRMAN. What will be the shrinkage on the steers in transit from, say, Dallas or Fort Worth to Chicago?

Mr. COWAN. The shrinkage would be about 50 pounds in the normal transportation if they were carried through on a speed of something

like 16 miles per hour, which is considered moderate speed. The railroads profess to make a better speed than that under normal conditions, but within the last two years it has not been done.

The CHAIRMAN. Will there be any shrinkage in the carcass?

Mr. COWAN. Yes.

The CHAIRMAN. What per cent; I am speaking of the meat?

Mr. COWAN. I understand that the shrinkage in a thousand or twelve hundred pound steer will run about a pound per hour, or near that. Many instances happen, and the court records are full of testimony on that, where they have been actually weighed at the point of shipment and actually weighed at the point of destination; and where they have been weighed in such manner as to show how much loss there will be if going through in normal time, and how much more if they leave late twenty-four hours or longer. In addition, an extra delay to the cattle, means a deterioration in the quality of the cattle. As commission men in the yards will tell you, and every cattleman will tell you, the loss is composed of two items, the shrinkage in the weight of the cattle and in the loss by reason of deteriorated condition which the cattle show when offered on the market after unreasonable delay, they being denominated as "stale" by the buyers of the packing houses, and those who buy for export and who ship into the country for slaughter.

The CHAIRMAN. Does that increase their temperature?

Mr. COWAN. In some instances, yes; but mainly from the fact that when you have been feeding cattle on cotton-seed meal in Oklahoma, Texas, or in Kansas, by mixing grain, and then take them out and stop that, you do not have the facilities nor the character of the food, and you can only give them hay. That being out of the ordinary condition in which they have existed, they seriously deteriorate, and the longer they are kept on the road the worse it is. Furthermore, when cattle are fattened on grass and are ready for the market, if they are ready for shipment and are held in a herd, or put in pens or close pastures, they begin to deteriorate from the time they are gathered off the range until they are shipped. Delays are very serious in that particular, and delays are also very serious from the standpoint of carrying on the business at all. For instance, I have a statement by Mr. S. H. Burnett, one of the large operators in the cattle business, that he would put in the pasture in Kansas about 4,000 steers this year if he knew he could get cars for shipment. Last year he was delayed forty-five days after the cattle were ready for shipment; in the meantime the grass became hard and the cattle did not thrive nor do well, whereas if they could have been gotten away in time the cattle would have gotten fat. And that is an instance of thousands that happen all over the country.

I suppose that the committee is informed in regard to those matters, and because of the shortness of time I will ask permission to file with the committee the testimony taken before the Interstate Commerce Commission last January in a case involving the question of rates, wherein the railroads claim that rates should not be reduced because they had to give a special service, and the witnesses testified as to what the character of the special service was. The attorneys of the railroad were present and cross-examined the witnesses, and I have had the evidence copied from the records of the Interstate Commerce Commission, and herewith file it.

Following is the testimony referred to:

Testimony taken before the Interstate Commerce Commission in case of Cattle Raisers' Association of Texas v. M., K. & T. Railway Company et al., at Denver, January 23, Amarillo, Tex., January 25, and Fort Worth, January 27 and 28, 1907.

C. W. MERCHANT (page 1916).

Mr. COWAN. You live at Abilene, Tex.?

Mr. MERCHANT. Yes, sir.

Mr. COWAN. And have ranches in New Mexico and Texas?

Mr. MERCHANT. Yes, sir.

Mr. COWAN. Is it not a fact that the time the railroads now require for the transportation of live stock is a greater length of time from the point of origin to destination than it formerly was?

Mr. MERCHANT. Yes, sir; that is my experience.

Mr. COWAN. Has that become so that it is the usual course of business?

Mr. MERCHANT. Yes, sir; my experience—what cattle I have shipped—it takes about twelve to twenty-four hours as a usual thing to get into the market longer than it did a few years ago.

Mr. COWAN. Twelve to twenty-four hours longer?

Mr. MERCHANT. Yes, sir.

Mr. COWAN. Say you are shipping from New Mexico to Kansas City, how long does it take now?

Mr. MERCHANT. The cattle I shipped last fall, it took about four days and nights from the time they were loaded at Carlsbad until they arrived at Kansas City.

Mr. COWAN. You are well acquainted with cattlemen throughout the country, are you not?

Mr. MERCHANT. I believe so.

Mr. COWAN. Is it or not a matter of common knowledge among stockmen that it requires a great deal more time than formerly in the transportation of cattle from the point of shipment to the markets?

Mr. MERCHANT. Yes, sir.

Mr. COWAN. Do you travel about a good deal?

Mr. MERCHANT. Yes, sir; nearly all the time.

Mr. COWAN. In doing so, have you been watching what use has been made of stock cars?

Mr. MERCHANT. Yes, sir. We have been trying to find out the cause of the shortage they claim on stock cars. Our experience is that there is not a train of freight switched off the switches but what has got more or less stock cars loaded with other freight—railroad ties, coke, coal, and other freight. That is so in almost every train I have taken notice of the last two years on the Santa and Texas and Pacific roads, the roads I load on.

Mr. COWAN. In all respects is the service increasingly worse than it used to be?

Mr. MERCHANT. Oh, it is worse.

Commissioner PROUTY. Is it growing worse?

Mr. COWAN. I say is the service growing worse?

Mr. MERCHANT. The service has been growing worse the last four or five years.

Mr. COWAN. Is it not a fact that the trains in which live stock are carried are very much longer and heavier trains now than they were before the rates were raised?

Mr. MERCHANT. Yes, sir.

Mr. COWAN. That is a matter that anybody can see every day?

Mr. MERCHANT. Anybody can see it. Then we have to wait anywhere from two to four weeks for cars the last two years, both on the Santa Fe System and the Texas and Pacific. I had cattle twenty-one days down at Carlsbad before I got cars. I was four days getting to Kansas City with them. I thought I would remedy it, and gathered another train of cattle and took them to the Texas and Pacific. I waited thirty days, and then went to Dallas, and there they would not promise me cars. I brought them back and turned them loose—a thousand of them.

Mr. COWAN. Will they live this winter?

Mr. MERCHANT. If we have another snowstorm or two, I do not think they will.

Mr. COWAN. That occurred frequently?

Mr. MERCHANT. Yes, sir; almost every neighbor we have in the southern part of New Mexico has experienced the same thing.

Mr. COWAN. Did you go to Kansas City with these cattle?

Mr. MERCHANT. No, sir; my son went.

Mr. COWAN. Do you know how many cars there were in the train?

Mr. MERCHANT. He started with 15 and he said they kept hitching on freight until they had about 30 or 40. They started from Carlsbad with 15 cars of cattle. When they got to Roswell they commenced to hitch on other cars.

Mr. COWAN. Have you had any experience shipping from Fort Worth to Kansas City this year?

Mr. MERCHANT. I shipped from Big Springs. I tried to ship to Kansas City, but they were so long we had them sold at Fort Worth.

Mr. COWAN. How long from Big Springs to Fort Worth?

Mr. MERCHANT. About fifty hours. We had a little wreck and had some excuse for that.

Mr. COWAN. Well, considering their running time?

Mr. MERCHANT. Thirty-six to forty hours—about 270 miles.

Mr. COWAN. There is no such thing as fast speed in cattle shipments now?

Mr. MERCHANT. No, sir; we do not expect it.

Mr. COWAN. If it happens, it is an accident in that part of the country?

Mr. MERCHANT. Sure.

Mr. COWAN. That is all.

Commissioner PROUTY. Any cross-examination?

Mr. WHITTED. You say that trains are longer now than they used to be?

Mr. MERCHANT. Yes, sir; there are more cars to the engine now than there used to be.

Mr. WHITTED. They are using a good deal larger engines now than they used to, are they not?

Mr. MERCHANT. They claim to have larger engines.

Mr. WHITTED. What roads, particularly, do you ship over?

Mr. MERCHANT. The Santa Fe and Texas and Pacific are the ones I am on.

Mr. WHITTED. Those are the only ones you have been shipping over?

Mr. MERCHANT. The only ones the last two years.

Mr. WHITTED. That is all.

J. W. VICKERS (page 1918).

Mr. COWAN. Where do you live?

Mr. VICKERS. In Los Angeles most of the time and in Arizona part of the time.

Mr. COWAN. State your business.

Mr. VICKERS. I am a stock grower.

Mr. COWAN. Where?

Mr. VICKERS. My principal ranges are in Arizona.

Mr. COWAN. You are in the cattle business?

Mr. VICKERS. Yes, sir.

Mr. COWAN. How many head of cattle have you?

Mr. VICKERS. Ten thousand or more.

Mr. COWAN. You have been engaged in the business how long?

Mr. VICKERS. About twenty-three years.

Mr. COWAN. Are you well acquainted with the situation in the transportation of live stock from that country to the markets and in Arizona and southern California generally?

Mr. VICKERS. Yes, sir; I have done a great deal of shipping and know considerable about it.

Mr. COWAN. State whether or not it requires a longer time now for the transportation of live stock than it did three or four or five or six years ago.

Mr. VICKERS. As a rule it does.

Mr. COWAN. That has become practically the routine business?

Mr. VICKERS. We do not know when we are going to get anywhere now when we start. We used to be able to calculate pretty closely what market we would make—in other words, what time it would take—and the district agents used to be able to tell us pretty closely what time it would take to get a train from a loading point to destination, but now we do not get much satisfaction from the representatives at loading points and scarcely any promptitude of service on the road.

Mr. COWAN. Has the service in point of speed made been growing worse from year to year?

Mr. VICKERS. Yes, sir.

Mr. COWAN. Do you get any fast service in the transportation of live stock now as a rule?

Mr. VICKERS. Well, as a rule, no. Occasionally we get very good runs.

Mr. COWAN. Compared to five or six years ago, what are the sizes of the stock trains now?

Mr. VICKERS. Well, the trains are long. The rule now is not to put anything over the road except in long trains, and it is the exception if one can get any service with the short train. We used to consider 15 cars a good train load, but so far as I know that is not the case any more.

Mr. COWAN. About how many now?

Mr. VICKERS. Well, from 20 to 40, and if one starts with 20 he is likely to get something else hooked on before he gets through.

Mr. COWAN. Do you ship over the Santa Fe and Southern Pacific?

Mr. VICKERS. Well, I have shipped over both roads.

Mr. COWAN. Do you know whether stock cars are used in the transportation of other freight?

Mr. VICKERS. I know they are.

Mr. COWAN. Is that practice increasing of recent years?

Mr. VICKERS. Well, I think in our section it has always been done more or less. I think it is being done more than it used to be. I think they have more stock cars than they used to have. I know that the Southern Pacific does. They did not use to have stock cars. They had what they called combination cars. Now, they have stock cars and they are used for many purposes other than loading stock.

Mr. COWAN. To what do you attribute the increasingly bad service, according to your observation? The service is growing worse. To what do you attribute it?

Mr. VICKERS. I think it is largely owing to the tonnage basis that is required by the companies. As I understand it, the western operatives are expected to do a great amount of tonnage and carry the most tonnage possible with a certain crew or engine, with all crews and engines, as it seems to us. That gives them trains bigger than they can handle and sometimes more than they can pull. Sometimes they have to cut them in two to get up a hill, and on a level they are hard to start without breaking in two. I have seen trains break in two because they were too long and heavy to stand the strain. They would pull out the drawbars, I think that is what they call them.

Mr. COWAN. Have you any particular facts you care to state?

Mr. VICKERS. I have no definite data at all.

Mr. COWAN. Anything further you desire to state in regard to the matter?

Mr. VICKERS. I think not.

Mr. COWAN. That is all.

Mr. WHITTED. How does the price of cattle at the present time compare with the price of cattle a year ago?

Mr. VICKERS. What kind of cattle?

Mr. WHITTED. Take the live stock in general. Has there been a rise or decline?

Mr. VICKERS. I think in the range country the prices are about the same. I understand that in Chicago the prices are better, that is, top cattle and top sheep.

Mr. WHITTED. How would the price be compared with two years ago, 1904?

Mr. VICKERS. I think the same answer would apply to two years ago as well as one year ago.

Mr. WHITTED. You ship to Kansas City and the Chicago markets?

Mr. VICKERS. Well, very seldom to Chicago. We have shipped a great many to Kansas City; that is, quite a number.

Mr. WHITTED. The price, you say, is approximately the same as two years ago?

Mr. VICKERS. In the range country stock cattle, I think so. There is some apprehension in places and classes.

Mr. WHITTED. How about the price in Chicago?

Mr. VICKERS. At Chicago I understand that top cattle are at a better price than they were a year ago or two years ago, top cattle and top sheep.

Mr. WHITTED. So there has been a rise in the price of cattle the last two or three years?

Mr. VICKERS. I think in finished cattle there is a better price than there was two years ago.

Mr. WHITTED. You complain about long trains. They have larger engines and haul longer trains in all kinds of traffic now, do they not, than they did a few years ago?

Mr. VICKERS. I think so. I do not think it applies to cattle alone. I think the orders and practice apply to all classes of freight.

Mr. WHITTED. There has been a general increase in the size of motive power and a general increase in all kinds of trains?

Mr. VICKERS. I think so.

Mr. WHITTED. They would not be able to handle the traffic if there was not such an increase, would they?

Mr. VICKERS. I think they got over the roads much faster before with trains they could handle than they do now.

Mr. WHITTED. I mean, taking the general increase of all kinds of traffic, if you do not increase the motive power and the train load you would not be able to handle it?

Mr. VICKERS. Well, as I intended to answer, I think with small trains and good time you could handle it better than you could with these over-sized trains and bad time.

Mr. WHITTED. That would involve a considerable increase in the cost of transportation on the part of the railroad, would it not, the number of engines and the number of crews?

Mr. VICKERS. Well, it would take more crews, but I think the railroad companies, of course I am not a railroad man, from observation I would be inclined to think you would do the business with so much more facility that you would make as much money as you are making now and give better service.

Mr. WHITTED. Your experience is confined entirely to the Santa Fe and the Southern Pacific?

Mr. VICKERS. No, sir.

Mr. WHITTED. I thought you said you shipped over those two roads only?

Mr. VICKERS. I was asked if I shipped over those two roads, and I said I had.

Mr. WHITTED. That is all.

JAMES A. LOCKHART (page 1930).

Mr. COWAN. Mr. Lockhart, you live at Colorado Springs?

Mr. LOCKHART. Yes, sir.

Mr. COWAN. Have you been in the cattle business in this country a great many years?

Mr. LOCKHART. Yes, sir.

Mr. COWAN. You are an extensive feeder and shipper?

Mr. LOCKHART. Yes, sir.

Mr. COWAN. State whether or not the time now required in transporting cattle from the point of origin to destination is longer than it was three, four, five, or six years ago?

Mr. LOCKHART. Very much longer.

Mr. COWAN. Can you illustrate it by any of your shipments as to the comparative time it takes now and what it took then?

Mr. LOCKHART. Yes, sir; we have had a great many shipments the last year. We shipped about 7,000 cattle and 26,000 sheep within the last year.

Mr. COWAN. From where?

Mr. LOCKHART. Principally after having gotten them to feed lots at Rocky Ford and Sugar City, Colo., but prior to that from the ranges from Wolcott, Colo., and Rifle, and some were brought to the market at Denver and elsewhere.

Mr. COWAN. What is the comparative time the last year in your shipments compared with what it was five years ago to Kansas City?

Mr. LOCKHART. I should think the difference would be in the neighborhood of 40 per cent.

Mr. COWAN. That is becoming an established practice, so you do not expect anything else, is it not?

Mr. LOCKHART. Yes, sir.

Mr. COWAN. How long does it take now from Rocky Ford to Kansas City?

Mr. LOCKHART. Sometimes three or four days.

Mr. COWAN. As a general rule, shipping your 7,000 head of cattle, what do you think it has averaged, approximately?

Mr. LOCKHART. We would not expect, with the service we get now, to get them there in less than four days and feed at one point between Rocky Ford or Sugar City, Colo.

Mr. COWAN. How far from there to Kansas City?

Mr. LOCKHART. I think in the neighborhood of 150 miles to Emporia.

Mr. COWAN. From Rocky Ford to Kansas City?

Mr. LOCKHART. About 582 miles, I think.

Mr. COWAN. Ten years ago how long would it take?

Mr. LOCKHART. We often went through in thirty hours, straight through with a train load.

Mr. COWAN. What is the size of the trans now compared with then?

Mr. LOCKHART. Very much longer.

Mr. COWAN. Take your own shipments, what number of cars did you start out with from Rocky Ford in the trains in which the cattle are shipped?

Mr. LOCKHART. We may start with 15 cars of cattle, or 20, but they have 30 or 40 cars of dead freight on there before we get near the market.

Mr. COWAN. What sort of dead freight?

Mr. LOCKHART. All sorts of stuff. I do not know just what it is.

Mr. COWAN. Have you paid any attention to the use of stock cars in the hauling of other freight, so as to be able to state whether that practice is increasing or not?

Mr. LOCKHART. Yes, sir; we can see hundreds of them almost every day, stock cars going by loaded with coke and ore and iron rails and all sorts of products.

Mr. COWAN. It is open to the observation of anybody who wants to see it.

Mr. LOCKHART. Oh, yes.

Mr. COWAN. Have you had difficulty in getting feed for feeding your cattle?

Mr. LOCKHART. Yes, sir; this year it is almost impossible to obtain shipments of grain to keep the cattle fed.

Mr. COWAN. Do you see these stock cars used for other purposes at times when there are cattle held for shipment in the vicinity of stations?

Mr. LOCKHART. Yes, sir.

Mr. COWAN. Has that been happening all last fall?

Mr. LOCKHART. Oh, yes; they have been using them for every purpose except cattle as a rule.

Mr. COWAN. Is the service now performed more valuable or less valuable than it was five years ago or ten years ago?

Mr. LOCKHART. Valuable to the shipper?

Mr. COWAN. Yes; is the service more valuable or less valuable to the shipper?

Mr. LOCKHART. Very much less valuable.

Mr. COWAN. Has the price of feeding and fattening cattle increased?

Mr. LOCKHART. Yes, sir; it has some; but of course that depends altogether upon the market for the grain products. Last year it was higher than it is this year, depending largely on the crops produced in the grain-growing States.

Mr. COWAN. Has the labor and handling cost increased?

Mr. LOCKHART. Very much.

Mr. COWAN. Have the profits in feeding cattle increased on an average, say, comparing now with 1900? Is it more profitable or less profitable than it was then?

Mr. LOCKHART. As a general thing, feeding cattle grain and for fattening purposes for large markets has been very unprofitable for a number of years.

Mr. COWAN. There is no certain profit?

Mr. LOCKHART. No, sir.

Mr. COWAN. Is it speculative?

Mr. LOCKHART. Yes, sir.

Mr. COWAN. I believe that is all, unless you have some point to suggest in respect to the matter of supplying cars or the character of the service.

Mr. LOCKHART. I would say that unless we get some better service from the railroad companies, I speak now from the standpoint of the feeder, we will have to discontinue the business of feeding cattle. To illustrate, I went to Kansas City a short time ago and purchased grain in the elevators, and went to the general manager of the Santa Fe and told him that I had purchased this grain and that my cattle to the extent of 3,000 or 4,000 head were on feed, and that unless I could get that grain to them I would have to ship the cattle on the open market and stand a loss of \$25,000 to \$40,000. Mr. Hurley assured me that he would do everything in his power to send the grain and to notify him as soon as I had the grain secured at certain points. I was fearful that if I purchased it at Wichita and other large points I would be unable to get it. I purchased at Burdett, Kans., and Lost Springs, Kans., and notified Mr. Hurley and the division superintendent between Topeka and where we feed at Rocky Ford. They seem to be unable to move that corn. After I got the corn they were unable to furnish the cars. For instance, to indicate what kind of service we are getting, I have a memorandum [producing memorandum] of the cars we shipped, and in one instance I was eight days in getting a car moved 62 miles from Lamar to Rocky Ford. We could send teams and haul it up within that time. To indicate further, I will state that car No. 1884 was billed at Lamar the 17th day of December and got into Rocky Ford, in the yards, on the 29th day of

December, 62 miles. On December 15 car No. 3769 was invoiced to us, 88,000 pounds of corn in it, and it has not got in yet.

Mr. COWAN. That will be sufficient illustration for that purpose. The business of feeding cattle in this country, if they were afforded the opportunity of transportation would furnish a large amount of westbound traffic, bringing grain from Kansas and Colorado points for feeding, would it not?

Mr. LOCKHART. Yes, sir.

Mr. COWAN. But if you can not get the service in hauling the corn and transporting the cattle back, you say you will have to go out of the business?

Mr. LOCKHART. Yes, sir; to illustrate, I had 2,520 sheep at La Junta last Friday evening. I was notified Friday evening that the cars would be there Saturday. We put the sheep into the pens to load out. Those sheep have been in the yards since.

Mr. COWAN. These things you have been reciting have been happening to a great many other people in other localities, have they not?

Mr. LOCKHART. Yes, sir; in the vicinity in which I have any knowledge in Colorado.

J. M. BOARDMAN (page 1937).

Mr. COWAN. Mr. Boardman, state where you live.

Mr. BOARDMAN. In Helena, Mont.

Mr. COWAN. You are engaged in the cattle business?

Mr. BOARDMAN. Yes, sir.

Mr. COWAN. Extensively engaged in that business?

Mr. BOARDMAN. Quite so.

Mr. COWAN. You have been for a great many years?

Mr. BOARDMAN. Thirty-eight years.

Mr. COWAN. You are well acquainted with conditions in the transportation of cattle from the Northwestern country to the markets?

Mr. BOARDMAN. Yes, sir.

Mr. COWAN. Has the time which is used actually in the transportation of cattle to the markets increased from Montana points to Chicago the last few years compared to what it was previously?

Mr. BOARDMAN. As a rule it has; but the difference has been more noticeable as the season of beef shipments is late. In other words, the early part of the shipment, the service and time is much better than the later shipments.

Mr. COWAN. What length of time do you expect now compared to what you had a few years ago in going to Chicago? How much longer does it take?

Mr. BOARDMAN. Well, in the beginning of the season we would naturally load a train to make the Chicago market on a certain day, on the old day of shipment, but I found out in our shipments this year, in fact, I found it out last year, that we had to give the railroads a day or a day and a half longer to make the same markets, and then sometimes we would fall down.

Mr. COWAN. Has that become a usual thing in the transportation of cattle from Montana to Chicago?

Mr. BOARDMAN. I think my experience would be universally that of other shippers.

Mr. COWAN. Do you know whether there is an extensive use of stock cars in handling other freight, in your observation?

Mr. BOARDMAN. I have noticed that to quite an extent. Of course our shipments to market—our beef shipments—are largely confined to the Great Northern System, but I have noticed stock cars—they have had to use mostly foreign cars of their own. In fact, they had very few of any kind of cars fit for the shipment of beef, so that they had to employ foreign cars. I have seen those foreign cars going in both ways—east and west—loaded with such stuff as shingles, coke, and rails.

Mr. COWAN. During the shipping season?

Mr. BOARDMAN. Yes, sir; I have seen them when cattlemen were crying for cars coming to the east loaded with ties, rails, or something of that kind, various things, and I have seen in the same train with cattle going east a number of cars loaded with shingles.

Mr. COWAN. Stock cars?

Mr. BOARDMAN. Stock cars.

Mr. COWAN. Is that a frequent occurrence?

Mr. BOARDMAN. Well, it is not an unusual occurrence. Of course, while there are very few stock trains that do not go out with dead freight, the dead freight is not always loaded into such cars.

Mr. COWAN. The size of trains has increased throughout the country so far as your experience goes, has it not?

Mr. BOARDMAN. They have more than doubled.

Mr. COWAN. Within what time?

Mr. BOARDMAN. I have seen stock trains from the loading point start out with 40 cars—25 to 30 is considered a stock train—but when we get as far east as Barnesville two or three trains are put together.

Mr. COWAN. How many cars?

Mr. BOARDMAN. From 40 up.

Mr. COWAN. From 40 up?

Mr. BOARDMAN. Yes, sir.

Mr. COWAN. You are now the president of the Western Montana Stock Growers' Association, are you not?

Mr. BOARDMAN. Yes, sir.

Mr. COWAN. You have been giving attention to this subject?

Mr. BOARDMAN. Yes, sir.

Mr. COWAN. The service has materially deteriorated in the country, the character or quality of it, has it not?

Mr. BOARDMAN. Oh, yes; the service has run down. The general service given the live-stock shipments is very different from what it was a few years ago.

Mr. COWAN. And that is so all over the country!

Mr. BOARDMAN. I think so.

Mr. COWAN. You have heard a number of experienced gentlemen testify here this morning, and the opinions they have expressed?

Mr. BOARDMAN. Yes, sir.

Mr. COWAN. Do they coincide with your judgment and opinion?

Mr. BOARDMAN. Yes, sir.

Mr. COWAN. That is all.

Mr. WHITTED. Is the price of cattle higher this year than it was last year?

Mr. BOARDMAN. Do you mean by that in 1906 or 1907?

Mr. WHITTED. 1906 higher than 1905?

Mr. BOARDMAN. Yes; there was a little advance, but I am speaking from a range standpoint.

Mr. WHITTED. I am asking about the price at Kansas City, Omaha, and Chicago.

Mr. BOARDMAN. Do you wish my answer confined to the value of range cattle?

Mr. WHITTED. I am asking you the value of cattle at the market.

Mr. BOARDMAN. There has been some advance.

Mr. WHITTED. It was higher in 1906 than it was in 1904, was it not?

Mr. BOARDMAN. Yes; that is by reason of the cattle having been considerably better than they were the year before.

Mr. WHITTED. That is all.

Mr. COWAN. I want to ask Mr. Boardman one more question. Mr. Boardman, is it not a fact that the quality and class of cattle has been better in 1906 than it was in 1905?

Mr. BOARDMAN. Yes; that is what I intended to answer.

Commissioner PROUTY. I understood him to say that.

B. PRESTON (page 1939).

Mr. COWAN. Mr. Preston, what is your business?

Mr. PRESTON. Farmer and feeder.

Mr. COWAN. Where?

Mr. PRESTON. At Fort Collins.

Mr. COWAN. What is your experience in respect to the matter of the transportation of live stock which we have been making inquiries about? You have heard the inquiries here. What is your observation and experience about it?

Mr. PRESTON. It is not as good as we used to have. I do not know that in my particular case I have any great complaint on the run I have been getting. The service at the feed yards is where I have had the trouble—getting loaded and unloaded and getting out.

Mr. COWAN. What time do you load at Fort Collins for Omaha's Monday morning market?

Mr. PRESTON. We do not go out. I have no particular complaint on the runs we have been getting out of our feed yards to Omaha, St. Joe, and Chicago. The runs have been fair so far.

Mr. COWAN. What time do you load at Fort Collins to reach Monday's morning market at Omaha?

Mr. PRESTON. We do not handle our stuff; I can not answer that. We do not handle our stuff the way you people do cattle. We load our stuff in the morning at Fort Collins and go to a feed yard—that is, strictly sheep. We take them to Valley or Fremont and hold them three or four days.

Mr. COWAN. How long does it take from Fort Collins to Valley?

Mr. PRESTON. Thirty hours.

Mr. COWAN. How far is it?

Mr. PRESTON. Five hundred miles.

Mr. COWAN. Has the size of the trains in which live stock is carried increased?

Mr. PRESTON. Yes, sir.

Mr. COWAN. Have you any specific cases of bad service in mind?

Mr. PRESTON. Yes; I have one particular case that came on last fall.

Mr. COWAN. State that, please.

Mr. PRESTON. In the month of August I have been making it a practice the last twelve or fourteen years to go down to New Mexico and buy sheep. I bought about 20,000 down there, and I ordered my cars in August to be loaded, I think about 10,000 in one shipment, in Albuquerque, on the 1st of November. I was promised by the Santa Fee assistant live-stock agent at El Paso that there would be no question about cars this year. I saw I was being delayed two or three days with my shipment, so I wrote the agent at Albuquerque and told him that I would not be in Albuquerque with my 10,000 lambs until about the 2d or 3d. On the 2d or 3d I went down there on the west bank of the Rio Grande River. I conferred with their agent and chief clerk at Albuquerque from day to day—in fact, three or four times every day. He advised me to cross the river and get ready to load the following Wednesday. This was Sunday. I advised Mr. Moore not to get me across the river unless he felt sure that I was going to get cars, because there was neither feed nor water on the east side of the Rio Grande. He told me to come across. I came across with the lambs. He had us lined up, how we were to ship. I was to ship Wednesday and another man on Thursday, and so on. I got myself across. Wednesday came and no cars. Thursday came and he put another man in my place, took the cars rated to load after me and loaded them first. I held my stock until the next Monday. They had water one time in those days I held them there and comparatively nothing to eat. We could not get it.

The yards promised me that I could water them in the stock yards provided they passed Government inspection. They had passed. I could not get them in to get the water, and when I loaded those lambs they had shrunk so that they were not worth within 50 cents a head as much as they were when I brought them to be loaded on the cars on the 2d or 3d day of November; and when we loaded them we were all day loading them on account of the accommodations they have in Albuquerque—all one whole day until 11.30 at night. We started out from Albuquerque. We had a very nice train and good engine and made a fair run and got into La Junta one morning at 10 o'clock. There was hay enough in the La Junta yards to feed 3 cars of sheep, no more. I begged the agent all day to get me feed for those sheep. He did not do it. He had a car-load in the yards. I finally went to the agent and told him that I would give him thirty minutes to get that car of hay to the sheep; if not, I would make complaint to the humane society. The car was there in twenty-five minutes. We loaded out the next day. We got through at 8.30 in the evening, loading that train. I think there were 27 or 28 cars. We did not leave the La Junta yards until the next day at 10.35. We stood there all night until 10.35 the next day. I went to Mr. Parker at La Junta and told him he had to pull me out or feed those sheep at my expense. In the La Junta yards there are no racks to feed from. We had to feed on the ground and they tramped it into the ground. Many of them were eating the wool off each other's backs when we loaded them at La Junta. After we started at 10.35 we made a fair run to Fort Collins. When I got those sheep unloaded there

were 1,000 at least that had the wool all eaten off of their backs. Some of them were absolutely naked, they were that near starved to death. When there is a patch of wool that big [indicating] off of a sheep and it goes on the market the packers pay us just the same price for that sheep as if it was shorn yesterday—from 50 cents to \$1 less than they would if the sheep had all its wool. I claim that the loss in the treatment we had on those 1,000 sheep was at least \$1 a head and on the whole shipment 50 cents a head.

Mr. COWAN. How long did it take you from La Junta to Fort Collins?

Mr. PRESTON. I think about twenty-eight or twenty-nine hours, a very fair run from La Junta to Fort Collins.

Mr. COWAN. How far is it?

Mr. PRESTON. About 275 miles. Another thing I wish to state. Myself and a great many others in Fort Collins have come to the conclusion, and have made up our minds, that unless we can get better service we must quit the business; that we have to quit it unless we can get better service. Those men that have come to that conclusion are men that have been buying 100,000 to 150,000 sheep in New Mexico every year and shipping them up to Fort Collins to feed.

Mr. COWAN. You mean better service in what particulars?

Mr. PRESTON. Well, better accommodations—that we can get cars. Our particular complaint is in getting the cars to put the stuff in. We bring them to the yards and have to hold them a week or two or three weeks. You must bear in mind that the stuff we deal in is lambs. They have just been taken away from their mothers. They go down so fast that it is almost impossible to get them back.

R. C. SOWDER.

Mr. COWAN. Mr. Sowder, you are an inspector of the Texas Cattle Raisers' Association, located at Amarillo?

Mr. SOWDER. Yes, sir.

Mr. COWAN. Your business is to inspect cattle at shipping points and to look after that business exclusively?

Mr. SOWDER. Yes, sir.

Mr. COWAN. Are you acquainted with the circumstances and conditions surrounding the transportation of cattle from the Panhandle of Texas to the markets and elsewhere?

Mr. SOWDER. Fairly well, yes, sir.

Mr. COWAN. Are you able to state whether or not the time that is now required or taken in the transportation of cattle to market, say, like Kansas City, has increased or decreased in recent years?

Mr. SOWDER. It has taken more time this last year than it did year before last.

Mr. COWAN. You testified in this case some three years ago?

Mr. SOWDER. Yes, sir.

Mr. COWAN. Does it take more time now than it did then?

Mr. SOWDER. Yes, sir; that is, they use more time.

Mr. COWAN. That is the usual course of the business?

Mr. SOWDER. Yes, sir. In 1905 I shipped quite a little stuff in the summer and fall myself and it generally went through without feeding, but part of the time I fed in Emporia.

Mr. COWAN. Do you see stock cars being used all over the country for other freight than cattle?

Mr. SOWDER. I see them loaded with coal, brick, stone, and some with railroad iron and ties coming this way.

Mr. COWAN. To what extent have the cars been loaded this last year with other freight than live stock?

Mr. SOWDER. To quite an extent. They have been used for hauling dead freight going west. I have seen 10, 15, or 20 stock cars in a train that have dead freight in them.

Mr. COWAN. Is it not a fact that it is a rare thing for cattle to go through to Kansas City from this territory without stopping to be unloaded between here and Kansas City on account of the thirty-six hour limit?

Mr. SOWDER. I do not know of any instance where we went through without unloading for feed. I know of several instances where it has taken as much as fifty or sixty hours to get to market from over there.

Mr. COWAN. Do you know how it is in shipments from New Mexico, like Portales?

Mr. SOWDER. I have not kept myself closely identified with them, only generally hearsay about that.

Mr. COWAN. Do you know anything about the Curtis Brothers' shipments?

Mr. SOWDER. The Curtis Brothers and Gus Myers are having quite a little bit of trouble all this fall getting here to Oklahoma. Tom Curtis told me the other day that he had the slowest service he ever knew in his life. He said that at one time when he got off the train the train pulled out and left him and he walked down the track 14 miles and overtook the train. Jim Curtis told me that a week ago, and said it was a matter of record that he did that; that in filing their claim against the Rock Island that it was made a matter of record that could not be gotten around.

Mr. COWAN. The man seemed to know that he would catch up if he persisted in walking?

Mr. SOWDER. He said that he had been three days getting down there, and he knew that it could not be very far ahead.

Mr. COWAN. Have there been any cattle held over this year because they could not get cars for shipment in the Panhandle district this year?

Mr. SOWDER. Yes, sir; there have been quite a few. Even if these could have gotten cars they could not afford to ship them because they shrunk so.

Mr. COWAN. Do you know what is the cause of this slow time that is made? Are you on the train sometimes and see the men?

Mr. SOWDER. I do know what the cause of it is, but they complain that the engines are too heavily loaded; in other places, that the track is in bad condition and they are not allowed to run fast.

Mr. COWAN. Did you see the orders in any case?

Mr. SOWDER. I do not know that I ever read them; I just heard conductors state to brakemen not to exceed 8 or 10 miles an hour over certain parts of the country. Some places they were so you could not make over 15 miles an hour; quite frequently I have heard it so stated.

Mr. COWAN. What would you say would be the average speed between division points between here and Kansas City?

Mr. SOWDER. The only one that I have figured on is where I have had cattle myself. In some instances I wanted to see what time they did make. I think it did at about 12 or 14 miles an hour—that is, taking the time from the time they leave here to the time they arrive at Kansas City. One train left here on a Thursday evening with five or six cars and it arrived at Kansas City after dark some time Sunday night.

Mr. COWAN. Now, as a usual thing, what time do cattlemen load their cattle here with a view to reaching Monday morning's market?

Mr. SOWDER. Some time Friday evening or Friday night.

Mr. COWAN. What would be in the general course of business the required time?

Mr. SOWDER. If they wanted to load their cattle on Saturday they would get into Kansas City before noon Monday. And if they do not get there before noon they can not show their cattle for sale before Tuesday.

At this point the witness was excused.

A. L. CHESHER (page 1997).

Mr. COWAN. Mr. Cheshier, you are an inspector for the Cattle Raisers' Association of Texas?

Mr. CHESHER. Yes, sir.

Mr. COWAN. You are located at Portales, N. Mex.?

Mr. CHESHER. Yes, sir.

Mr. COWAN. You have been in the cattle business all your life, Mr. Cheshier?

Mr. CHESHER. Yes, sir.

Mr. COWAN. Do you inspect shipments and look after the loading and shipping of cattle?

Mr. CHESHER. Yes, sir; I look after the loading of the cattle that is going out of the territory at Portales, Bovina, and Hartford.

Mr. COWAN. Have you made any observation as to the use of stock cars for the handling of other than live stock?

Mr. CHESHER. Yes, sir; I have noticed a good many cars going south loaded with brick, coal, and ties. I do not know that I ever saw any loaded with steel.

Mr. COWAN. Do you notice the cars down there at any time in that use when cattle are awaiting shipment?

Mr. CHESHER. I have seen them standing in the yards loaded with this plunder and waiting for stock cars. We stayed there in Bovina five weeks on one shipment.

Mr. COWAN. How long do the stock cars loaded with other materials stay there?

Mr. CHESHER. Three or four days and probably go on somewhere else.

Mr. COWAN. Quite a considerable number of cars?

Mr. CHESHER. I do not know that I ever saw ready more than two or three at a time in the yards at once.

Mr. COWAN. Do you know whether the time that is now required and has been required for the last year or two in transporting live stock to Kansas City has increased?

Mr. CHESHER. No, sir; it has decreased, the speed has.

Mr. COWAN. What is the usual practice now of cattle men compared to what it was four or five years ago?

Mr. CHESHER. We used to load at Portales and Bovina on Saturday and get in Kansas City Monday morning; now we load Friday.

Mr. COWAN. Do they ever ship in from that country without having to unload?

Mr. CHESHER. No, sir; they unload and feed all the time.

Mr. COWAN. What do think would be the average time that is made on live stock and has been made for the last year or two in shipments to Kansas City?

Mr. CHESHER. I do not know. From just a little shipment I made myself, I loaded it at Bovina and it was four days getting to St. Joseph in December.

Mr. COWAN. The time has been very much extended in actual practice?

Mr. CHESHER. Yes, sir.

Mr. COWAN. Is it not a fact that a great many cattle were not shipped to market this year because they could not get the cars?

Mr. CHESHER. Yes, sir; I saw one herd turned back at Bovina.

At this point the witness was excused.

J. H. PARRAMORE (page 2013).

Mr. COWAN. Mr. Parramore, I believe you live at Abilene, Tex.?

Mr. PARRAMORE. Yes, sir.

Mr. COWAN. You have a ranch in Arizona and one in Texas?

Mr. PARRAMORE. Yes, sir; I have a ranch on the line between Arizona and New Mexico.

Mr. COWAN. How far from El Paso?

Mr. PARRAMORE. My shipping point is 165 miles from El Paso, in New Mexico.

Mr. COWAN. What is the station from which you ship from your Arizona ranch?

Mr. PARRAMORE. I ship from a station called Rodeo.

Mr. COWAN. To where do you make shipments?

Mr. PARRAMORE. Well, I have been shipping to the Fort Worth market, so far. I have never run any cattle—since the packing house has been here at Fort Worth I have never run any cattle—to Kansas City. I have been shipping to Fort Worth. Sometimes I ship cattle over the Santa Fe to Kansas City—run up to Denver and transfer there.

Mr. COWAN. You testified in this case about a year and a half ago, Mr. Parramore, or a little more, did you not?

Mr. PARRAMORE. Yes; about a year and a half or two years ago.

Mr. COWAN. Will you state whether or not the service in point of time required in the transportation of live stock from the point of shipment to destination has grown poorer since that time or better?

Mr. PARRAMORE. Well, the service generally has grown poorer—scarcity of cars, motive power, and handling the stock generally.

Commissioner PROUTY. By what railroad does he ship, Mr. Cowan?

Mr. COWAN. I will show. What length of time does it take from your place, via the El Paso and Northeastern?

Mr. PARRAMORE. The Southwestern, we call it.

Mr. COWAN. The Southwestern to El Paso, and from El Paso over the Texas and Pacific, to reach Fort Worth?

Mr. PARRAMORE. Well, I must say that I have no complaint to make of the El Paso and Southwestern. They give us good runs. From El Paso to Fort Worth it is seesaw, drag-haul all the way—poor service.

Mr. COWAN. How long does it take from El Paso to Fort Worth?

Mr. PARRAMORE. I really do not know. We unload at Big Springs. I have not done a great deal of shipping—I have sold my cattle. But all the time there is complaint. We would expect them to be in market a certain day and they would get in the next day. We can not tell when we will hit the market. If we expect to get to Big Springs and get on the market a certain day, we have not been able to do it.

Mr. COWAN. What difficulty do you have in respect to getting cars and getting in and out of El Paso in making shipments? Just explain that and give instances.

Mr. PARRAMORE. I will explain it to you. I have had a great deal of trouble here in the last shipments in November and December. I think it was the 5th or 6th of November I went through El Paso, and two weeks previous to that I had written Mr. Ward a letter.

Commissioner PROUTY. Who is he?

Mr. PARRAMORE. The general superintendent of the Texas Pacific—I wrote from here to El Paso, I think. I asked him if he could not furnish me cars. I ordered cars at the same time through Mr. Simmons, the general superintendent of the El Paso and Southwestern. I wanted 20 cars; 10 cars to ship on the 10th from Rodeo and 10 cars to ship on the 20th of November—the 10th and 20th of November. I ordered 20 cars.

Mr. COWAN. For each shipment?

Mr. PARRAMORE. Each shipment. I think it was the 5th of November I went through El Paso. I heard nothing from Mr. Ward. I met Mr. Ward at Abilene and asked about running the cars out, and asked if he would not run the cars out, and said they would be returned right away. I got to El Paso on the 5th. I saw Mr. Simmons and he told me, I can get up enough cars to bring you into El Paso, but you had better see how you are going to get out of El Paso. I went down to the railroad agent, Mr. Elridge, and asked if Mr. Ward had said anything about cars. He said no. I said that I wrote Mr. Ward about it and talked with him personally about it. I said, I want the cars; I will load on the 10th at Rodeo and want to load out of here on the 11th; I do not want to run in my cattle and keep them here and wait until you get cars. I want them on the 11th. I said, wire me if you can furnish me cars to take my cattle out of El Paso. Well, I did not load until the 11th, because I did not get a telegram from him. On the 11th I got a telegram from him saying "Cars in sight to pull out your cattle." We loaded on the 11th and came into El Paso. They told me that I would have to pay freight on these cattle at El Paso; that they would not let any charges follow. I placed money in the bank to pay the freight to the El Paso and Southwestern. I came on down with the cattle and next morning I called up the banker—it was Sunday. I said, "Phone to the El Paso and Southwestern that you will pay the charges on these 12 cars of cattle." They took it up and finally agreed to let the charges

follow. I sold these cattle to Mr. Biggel. We got the cattle out of El Paso. We got in there, I think, about 11 o'clock at night. They left El Paso, were switched down there, and we left El Paso the next evening about 4 or 4.30 o'clock.

Commissioner PROUTY. That is, there was a delay from 11 o'clock one night until 4 o'clock the next afternoon?

Mr. PARRAMORE. Yes, sir. Then they went to Big Springs and were fed. I went back to the ranch. •

Mr. Low. May it please the Commission, it seems to me that we might as well make the issue that naturally arises, that the Commissioners can not fix rates on poor service. In a case like this, where they agreed to furnish cars and did not do it, the law imposes the liability. The Commission can not make it any less or any greater. It seems to me that this testimony is immaterial. :

Commissioner PROUTY. I do not think that we ought to hear much testimony as to specific instances, but the defendants claim that one reason why these rates ought not to be reduced is because the railroads are required to give expeditious service. They say that they do, in point of fact, expedite this service. The testimony has tended to show that, in point of fact, the service was not so expeditious as the carriers state. To that extent it seems to me that it would be material.

Mr. Low. It seems to me that the law fixes the liability. The carrier must furnish reasonable service or is liable.

Commissioner PROUTY. You insist that you are furnishing reasonable service, do you not?

Mr. Low. I do not. I do not think we are.

Commissioner PROUTY. What do you say a reasonable service would be?

Mr. Low. That would depend on many conditions that would apply at different places. I do not think any man can contend that the railway lines on particular lines are furnishing expeditious service. On some lines we are furnishing excellent service, but on these lines I do not think we are. To-morrow we may get our lines in shape and furnish good service. Rates are fixed on the basis of reasonable service. If we depart from reasonable service, the law gives a remedy.

Commissioner PROUTY. There might be a question as to what reasonable service is. I understand Mr. Cowan to claim that the railroads insist to-day that the service they gave seven or eight years ago ought not to be required now.

Mr. Low. That is a question of fact for the court and jury that tries the complaint.

Commissioner PROUTY. In fixing the rate, we must have in mind the service which is being rendered.

Mr. Low. Well, that is a legal question.

Commissioner PROUTY. We could not fix the rate unless we knew what service is to be covered by it.

Mr. Low. You fix it as to reasonable service.

Commissioner PROUTY. We will receive testimony tending to show about the time these carriers do accord to these shippers. Of course, we must determine when we fix the rate whether that time is a reasonable time or not, but I think we will receive testimony, not in respect to particular shipments, but in general respect to particular

shipments, but in respect to the general condition of things—how long, as a general thing, does it take to get these shipments from one place to another.

Mr. Low. I simply want to get into the record our objection.

Commissioner PROUTY. And in this case, the petition being for a through rate, Mr. Parramore might state what inconvenience he was put to in transferring his cattle at El Paso, so that he can contrast the present shipments with what would be done if the shipment were a through shipment.

Mr. COWAN. You may proceed, Mr. Parramore.

Mr. PARRAMORE. Well, we got the first train of cattle out. I was to load those cattle on the 20th. I saw the agent of the Texas Pacific road.

Commissioner PROUTY. You are talking now about the second shipment?

Mr. PARRAMORE. The second shipment. I went over to see Mr. Simmons, of the El Paso and Southwestern. He said, Mr. Parramore, we have not any cars to pull you, and unless the Texas Pacific furnish me the cars I will have to wait until coal and wood and such things come in and we will have to unload the cars and furnish cars to pull you out.

Commissioner PROUTY. How far is it from your station to El Paso?

Mr. PARRAMORE. One hundred and sixty-five miles. Well, I stayed there until the 20th rolled around. I heard nothing of the cars. I stayed there a week and then got on the train and came down to El Paso. We knew that there was a bunch of cattle to be shipped from Vanhorn, this side of El Paso, to California, 15 or 20 cars.

Mr. COWAN. They would be delivered?

Mr. PARRAMORE. Delivered through the Southern Pacific. These cattle cars were going to San Francisco. The Texas Pacific would unload the cattle at El Paso to the Southern Pacific. I asked if I could get those cars. I said, "Mr. Simmons, these cars are to be unloaded there. Can you get them to run these cars out and carry them to the ranch and load them back?" He said he was doing all he could and he was satisfied that he would get those cars and we would not be bothered at El Paso on the return. I went to see the freight agent of the Texas Pacific. I asked him about cars and he did not seem to know anything about it, and told me he had just had a wire that Mr. Simmons had taken the matter up with Mr. Ward, and they would not let those cars go out. I said, "I can get into El Paso, but what I want to do is to get out. There is no joint rate. I have to pay a local in." What am I to do? Just dump them into the pens and wait?" We had quite a time. I ordered 14. He said, "Ten times 14 are 140." I said, "What do you mean by that?" He said, "I will tell you. You give me \$140 and I will steal them when they come in over here and turn them over to Mr. Simmons." I felt indignant. I said, "I am no thief, and never hired a man to steal for me. It is a pretty come-off when we come here to be robbed right in the railroad office." He said, "One man up here at Deming offered \$20 for a man to do that." I said, "There may be men buying the railroad, but I'll be darned if I won't turn my cattle loose first. I do not have to ship them." I was hot. He said, "I was only joking." They went out. The fellow was going to hold me up. I got the cars to run the cattle. I got the cars and shipped my cattle and they got a good run.

Mr. ADAMSON. You do not get any such service?

Mr. COWAN. No; We know that we do not have it.

Now to give some samples that seem impossible to have happened: Mr. Preston, as shown in this testimony, said that he bought 10,000 lambs at Albuquerque, N. Mex., to ship to Fort Collins, Colo., to feed. There is a large business in that there. He had very great trouble in getting the cars; he was more than a month in getting them shipped. After they were shipped they were kept so long on the cars at various places before they arrived at Fort Collins that more than a thousand head of the lambs had the wool eaten off by the other sheep. A sheep feeder at Las Animas, I believe it was, or in that neighborhood, said that he was buying grain in Kansas to ship out for the purpose of feeding lambs. In order to get a car he had the grain shelled and sacked at a certain point at a cost of \$56, and loaded in a stock car so that it would go out, the distance being 250 or 300 miles from the point purchased on the line of the Santa Fe Railroad. This grain was over three weeks in getting to him, then it was carried 11 or 12 miles beyond his station, and the car had been three days at a station 11 miles beyond where he was, and he had not been able to get the car back.

The CHAIRMAN. Why should this be, Mr. Cowan? One would suppose that the interests of the railroad company would require them to make a speedy delivery.

Mr. COWAN. It is difficult for us to say, Mr. Hepburn, why it should be. The most we can say is that it is a fact; that it was not disputed and is not disputed. We seek not ourselves to manage the railroads, but to have the duty which they owe to a shipper performed, and a reasonable penalty imposed to enforce that duty so that the shipper may know what the railroads should do for them, and may compel the enforcement of that duty by the means which they see fit to use.

Mr. MANN. Was there any explanation by the Santa Fe people regarding this particular case?

Mr. COWAN. No, sir. This testimony was taken at Kansas City. The attorneys for the company were present; the live stock agent, I believe, was present, and they had a number of officials in the city or present. They did not at that time, or thereafter, give any excuse for it.

I wish to call your attention to some testimony taken at Fort Worth, if I can find it, but I can state it probably—and you will find it in this testimony; I haven't time to turn to it—will say that Mr. M. A. Low, whom you all know, representing the Rock Island Railroad, was present at the examination of the witnesses at Fort Worth. I was proving a lot of these facts in regard to the method of handling business, and Colonel Low objected to the testimony on the ground that it was of no importance in the case; that the question of rates was involved and not the question of service. Commissioner Prouty said (substantially): "We concede that to be the case, but you are contending that you ought to have this rate apply because of the character of the service you give. These people here contend that you do not give the service. Now, Mr. Low, do you contend that you give the service?" Mr. Low replied: "We do not." He plainly admitted, even in stronger language than I have indicated, that he did not give the service, but he said that the rate should be made on the basis of good service, and the railroad company held responsible

to the performance of the service. So that we have the admission from Mr. Low.

Mr. MANN. Who is Mr. Low?

Mr. COWAN. General counsel for the Rock Island. He has been the general representative in a great many things in Kansas City, a very strong man, and well known all over the western country. He has represented the Rock Island for a great many years.

Mr. ESCH. As a matter of fact, do the railroads in your section want this kind of freight business? Is it profitable?

Mr. COWAN. They want the business. The difficulty has been, for the most part, that the railroads do not exchange cars with each other for the last few years, and to that is traceable 75 to 80 per cent of the difficulty. For example, take a man living on the Fort Worth and Denver City Railway, connecting with the Santa Fe, the Frisco, and the Rock Island, over which you must go to market if you go at all. The Fort Worth and Denver City Railway Company will not permit its cars to be loaded for shipment to points beyond its line, and the Rock Island, the Frisco, and these other railroads will not permit their cars to go to that road for the purpose of being loaded. Therefore the shipper is put to the necessity of waiting until some foreign cars come to the line to be loaded, or is obliged to work some sort of a scheme. It is remarkable that these things exist, but, gentlemen of the committee, they are facts, and undisputed facts.

Mr. MANN. Is that owing in any degree to the legislation of the State of Texas?

Mr. COWAN. Oh, no, not at all; the conditions are just as bad in New Mexico, Colorado, Arizona, and they are just as bad in California.

Mr. WANGER. A great many people claim that that is a matter of self-defense. What reason do they give for limiting their cars to their own line?

Mr. COWAN. They tell you that when they let them get off their own line, they can not get them back. Everyone says the same thing. I will give you an example. Take the shipment of grain from Kansas and Oklahoma. All during year before last, 1906, and I know in a large part of the year 1907—whether it is so now or not I can not tell you, but I think it is substantially—you could not load a Rock Island car in Kansas or Oklahoma with grain to go off the Rock Island line in Texas. An enormous amount of grain is consumed south of Fort Worth and Dallas, which are the termini of the Rock Island road. The grain shipper was compelled to wait, unless he transferred the grain at Fort Worth, which of course he did not want to do because he had a right of reconsignment which he could not do with the Rock Island car. So it was with the Santa Fe, and with the Missouri, Kansas and Texas also, and the result was that the grain dealer was almost put out of the grain business. I mention that because I know about it.

The CHAIRMAN. What is that particular advantage that you spoke of? You said that the shipper did not want to make an exchange because he would lose an advantage of some character.

Mr. COWAN. He has the privilege of reconsigning the grain in a car, and if he were going to the trouble of unloading the grain,

in the time he has to make a reshipment of that grain and the difficulty may be to get the car from another road to reship it in.

Mr. Paramore has a large ranch in Arizona. The Phelps-Dodge road runs from El Paso out there, and he wanted to ship cattle to the Fort Worth market, but he has to make arrangements first with the railroad that leads to his ranch in order to get cars. The Texas and Pacific Railroad will not accept those cars at El Paso and the Texas and Pacific will not agree to furnish cars at a particular date. The result is that he has to take chances if he ships any cattle as to whether he can unload them at El Paso and get cars to ship them beyond.

Mr. MANN. Why do you say that the Texas and Pacific will not accept the cars?

Mr. COWAN. The Texas and Pacific stated that the reason they would not—they did not state here in the testimony that they would not accept the cars—I did not hear that statement, but the reason they will not permit their cars to go over their line is because they could not get them returned.

Mr. MANN. But you do not want a statement to go in the record to the effect that that railroad will not accept cars of freight delivered from another railroad company?

Mr. COWAN. I would not state that. I do not state that they will not accept the cars of another road, but I say they will not accept an equal exchange of cars, and that is what this bill provides for, that it will define the duties of the carrier to the shipper.

Mr. HUBBARD. In this specific instance that you gave, why would not the Texas and Pacific accept the cars? Was it because the first road would not turn them over?

Mr. COWAN. The first road will not turn them over until they get cars in exchange, for they would exhaust themselves entirely if they did that. We want the law to define what the duties of the carriers are to the shippers, not particularly with respect to live stock but in general, then to fix a reasonable penalty for not performing that duty. In order to aid the railroads in carrying out the purpose of the bill, we want to provide that when a railroad company delivers loaded cars to another it shall have the right, if it wants them, to demand delivery back to them within a reasonable time from the date of the demand as many suitable cars as it delivered loaded.

Mr. STEVENS. Supposing the receiving road does not deliver them?

Mr. COWAN. That is the object of the law, that it shall be the duty of the receiving road to do that.

Mr. STEVENS. What is the penalty if they do not?

Mr. COWAN. The penalty fixed in this bill is the damages plus the attorney's fees—the damages that result to the shipper on the part of the railroad company for not complying with that duty, and a penalty which the Government may, at its discretion, enforce at the direction of the Attorney-General and the Interstate Commerce Commission.

Mr. STEVENS. Up in our country, the Central Northwest, one of the railroads connecting several of the large termini—for example, the Chicago and Great Western—is in a receiver's hands. Suppose that it has an inadequate supply of equipment. It reaches Kansas City, Sioux City in Iowa, St. Paul, Minneapolis, Chicago, Des Moines, and other places. Now supposing that the Santa Fe or the Rock

Island, or whatever road it may be, delivers stock at Kansas City; the Great Northern, the Northern Pacific, and the Sioux line, deliver a lot of material at St. Paul and Minneapolis, and some other road delivers a considerable quantity at Sioux City. The Chicago and Great Western has not an adequate supply of cars, can not get them, and can not get money to buy them. What do you say that road should do?

Mr. COWAN. I will answer that question by asking you a question. Can a railroad company refuse to perform the duty of transporting interstate commerce?

Mr. STEVENS. It is ready to transport interstate commerce, but it has not the equipment and can not get it, yet the freight is offered. What are you going to do about it? The road is in a receiver's hands and could you collect a penalty?

Mr. COWAN. I do not know what a railroad company would do that did not have any cars, but I do think that the law ought to protect the shipper.

Mr. STEVENS. A great many railroads have not had ample equipment at all, recently. How are we going to compel a railroad company to get equipment when they say they can not get the cars and can not get money to buy them with?

Mr. COWAN. They say that, but that is not so shown by the annual reports of nearly all of the railroads. I will file with you a statement—but I must be brief because others are waiting to be heard—a statement which shows the comparative amount of equipment in ratio to the tonnage carried on 75,000 miles of the principal lines of railroads leading out of Chicago and St. Louis; taking in all of the trans-Missouri lines with the exception of the Union Pacific. These figures show the supply of equipment, moving cars and locomotives, up to the time the figures were made out by the Interstate Commerce Commission. It shows the increases in the traffic; that is to say, the increases in the tons carried 1 mile. We all know, and it is demonstrable, and the annual reports show, that the capacity of locomotives has very largely increased, so if you add the capacity and increase in number of both locomotives and cars on the 15 or 20 railroads leading out of Chicago to the south, the west, and the southwest you will see that it exceeded in 1906 the ratio to the tonnage in 1900. The frequent statement made of a shortage in cars is not only not true, but it is a misrepresentation; that is, when stated by people who know. Mr. Hill does not claim that there was a shortage of cars.

Mr. KENNEDY. The shortage of cars on a road would not prevent them from returning immediately, or in a reasonable time, cars that had been consigned to that road?

Mr. COWAN. Not at all.

Now, this bill contains two provisos in the first section that the railroad company is not to be subject to the penalties of the law for delays for unavoidable causes which could not be provided against by reasonable foresight and diligence. Certainly that is as liberal as anybody can ask. They are under penalty to use reasonable foresight and diligence to prepare themselves to perform the business in which they are engaged. Take a man, like numbers of people that we can point out, who have had to turn their cattle back on the range, who could not ship them during the season at all, and the men who could not ship their feed and who had to go out of busi-

ness, and could not utilize pasture. Hundreds of men have suffered severe losses. A man told me that he shipped a mowing machine in a carload of farming implements loaded at Chicago a month before his millet, which was under irrigation at Roswell, was ripe. He lost his crop because it did not get there. Are these things to be permitted, as they will if Congress does not define the duty of the railroads and put some reasonable penalty for the failure to perform the duty? If not, the railroads will themselves determine under what rules they will perform the service, and shall that be?

Now, in the western country, as Mr. Stevens knows, they want a reasonable service and a reasonable rate, and they can not get it on interstate trade unless the law defines the duty of the railroad first and sets the penalty. This requires the railroads to do that which they did do always right up to two and a half or three years ago, namely, to exchange cars with each other.

Mr. MANN. I would like to ask you, as a legal proposition, whether the Interstate Commerce Commission has passed upon its power, under the Hepburn law, to make rules and regulations which would govern the furnishing of cars and the interchange of cars, or anything of that sort?

Mr. COWAN. They hold that they have not. They can declare a through rate—but I think that has been decided.

Mr. MANN. When and how did they pass upon it?

Mr. COWAN. I can not just cite you the case, but they have decided that.

Mr. MANN. Is it in a case, or one of those instances where the Commission over night has decided what it should not or should do?

Mr. COWAN. I think in both. I think the expression is in a case that I had against the Texas and Pacific Railroad to compel the establishment of a through rate, in which I asked that they make an order respecting the interchange of cars. The Commission established the through rate, but declined to make any order respecting the exchange of cars, holding that they did not have the power under the law to do that.

Mr. MANN. I think when we passed that law that it gave them that power. If you can cite us a case under the decision, I will be greatly obliged.

Mr. COWAN. I think the Cattle Raisers' Association of Texas v. The Texas and Pacific Railroad was the case.

Mr. MANN. If it was that decision and it has been published can you send us a copy of it with your statement?

Mr. COWAN. I will try to find it and send it to the secretary of the committee.

The CHAIRMAN. Have you any doubt about their power under the law?

Mr. COWAN. I doubt if they have power to require an exchange of equipment.

Mr. KENNEDY. But that would be a reasonable regulation, would it not?

Mr. COWAN. Yes; it would.

Mr. KENNEDY. We conferred in express terms the power to make regulation.

Mr. COWAN. But I call your attention to the fact that the compulsory interchange of cars involves necessarily providing means whereby

the use would be paid for—the loss or destruction would be paid for—so that it will not be the taking of private property without just compensation, and providing means for adjusting the compensation. That this bill attempts to do, by providing that the Commission, in the first instance, may fix the compensation on loss or damage by injury or destruction, and if the railroad is not satisfied with that they have a right to apply to the United States court to have that fixed. Under that provision I do not think the law would be constitutional that required an exchange of cars, unless the law provided a means whereby a just compensation would be made for the use of the car which one railroad must deliver to another.

Mr. MANN. Do you think that the courts can decide what that just compensation is in advance of the taking upon a hypothetical case?

Mr. COWAN. I am disposed to think that might be done, but it is not certain that it can be done by any means. It is a difficult question.

Mr. MANN. Is not legislative power subject only to review by the courts as to reasonableness?

Mr. COWAN. Probably that is so, but if we take the analogy of condemnation proceedings we find a good deal in it that would bear out the idea that the courts may be given authority to do that. Certainly the Commission, in this bill, is given express authority to do that; but I was afraid if you gave the Commission the power to do that and did not give the right to appeal to a court to have it determine, particularly when it is for a past use, a past destruction, and a past injury, that the law would be unconstitutional.

Mr. RICHARDSON. Would not the court be exercising a legislative function?

Mr. COWAN. Not in determining what the damage was in the past, but in fixing a rule for the future probably that is correct. It is a very difficult question, and one that would require very close analysis to see how far the court would go.

Mr. MANN. Why do you not test the law we passed?

Mr. COWAN. We can not do it. What can the shipper do?

Mr. ADAMSON. Inasmuch as they do it voluntarily, let them go. Is it any more, under those circumstances, than reasonable regulations to provide that they shall do it in certain reasonable amounts?

Mr. COWAN. There is no doubt that Congress has the power to direct that to be done. I am sure that the Supreme Court of the United States in the case coming up from Minnesota has substantially held that. But that is not a question giving me any trouble whatever. Apart from the necessity of undertaking to test this law, let me appeal to the judgment of this committee just for a moment, that it can not hurt anybody if we plainly define the reasonable duty of the railroads. Although somebody may assume that somewhere else it is defined, it can not hurt anything to provide a reasonable remedy, the remedy being the right to go into any State, Territory, or Federal court and recover on the damage plus a reasonable amount for attorney's fees. That makes it automatic with the amount of the injury, and there is nothing else that will. We do not think it well to put in an arbitrary penalty to the shipper, but we fix a penalty which the Government itself can utilize if it desires to compel the observance of the law, which penalty goes only to the Government and not to the individual. The individual must be satisfied with the

damage plus attorney's fees, whereas the Government may enforce the penalty through the Attorney-General's office or under the direction of the Interstate Commerce Commission.

Now, assuming that there might be doubt as to what the powers of the Commission are under the present law; certainly the shippers are not receiving any benefit from that, and it is impracticable for them to do so. You take the shipper out in Iowa, Colorado, or Texas who ships five cars of cattle and is delayed a week in getting the cars after the cattle are at the pen—and that is quite usual—and he is seven or eight days in traveling the eight or nine hundred miles, so that he loses two or three dollars a head. He is out \$100 to \$200. If he could go into a justice's court or a county court and bring a simple suit for the violation by the railroad of a duty defined by Congress, then he has a remedy that he can enforce. But if he must go before the Interstate Commerce Commission for reparation, he will not do it. He does not do it and nobody does it; it is impracticable. You must give the people a fair opportunity to make the railroad respond in case of injuries done, and that is the object of this bill, and to enable the railroads themselves to better perform the service.

Mr. HUBBARD. Have the railroads themselves endeavored to establish any system the operation of which would tend to make it to the advantage of the road detaining the car to return it?

Mr. COWAN. Yes; they have had various rules on that subject, but those rules have never worked out to do the business. I hope you will excuse me for not going into the details of it, but the testimony is to the effect that they have had certain rules—

Mr. HUBBARD. What are the car-service rules in force?

Mr. COWAN. The car-service rules provide so much per day or per mile, but they have changed it so often that I am unable to tell you about it. It was 20 cents a day, it was 50 cents a day, and it was put at \$1 a day in some localities. It was 6 mills per mile in other localities—the rules have been so various that I can not tell about them.

Mr. HUBBARD. Have changes been made for the purpose of making the system more effective in compelling the return of cars?

Mr. COWAN. It was with that end in view, but it did not secure it, because the amount that was fixed as a per diem charge was not such as to keep the railroads from stealing cars from each other, as they call it.

Mr. HUBBARD. It was not large enough?

Mr. COWAN. If they had made it large enough it would have been burdensome to the railroads that wanted to do what is right.

Mr. KENNEDY. Can you state how many railroads in the country are in the Car Service Association?

Mr. COWAN. I think the car service associations have as members every railroad in the country, in different districts.

Mr. KENNEDY. Do not the railroads, in going into it, practically acknowledge their duty to send the cars where they must go?

Mr. COWAN. Yes. I was trying to find a report made by Commissioners Harlan and Lane upon an extensive investigation made at Minneapolis and Chicago about a year ago, which I wished to file.

The CHAIRMAN. Before you leave this subject I want to call your attention to section 2. It imposes upon the different railroads an obligation to furnish connecting lines, if demanded, as many cars as

have been received loaded for shipment. Take, for instance, the case of a road at Kansas City running to Chicago that has no such traffic as you have spoken of respecting the southwestern country, and it has just enough cars to do their local traffic in cattle. There comes a shipment from Texas for Chicago, and under the provisions of this law, if it was the Alton road, they would receive this Texas consignment, and the bill proposes that they shall deliver to that connecting line from which they receive that consignment an equal number of unloaded cars.

Mr. COWAN. An equal number of suitable cars.

The CHAIRMAN. Suitable cars, yes. In case of a road of that kind that has no provision for doing the particular business from the southwestern country, and has simply the equipment that is necessary to do the business that originates on its own line, do you think that Congress has the power to compel the Alton road, say, to deliver the equal number of suitable cars?

Mr. COWAN. In a reasonable time, yes, sir, I do; because they received that many, and the question as to what is a reasonable time must always be determined by the circumstances of the case; and it might, as to the Alton road, under such circumstances be a reasonable time to deliver them back after being carried to destination and unloaded—but practically it is not so, we all know that. Practically they are all engaged in the same line of business.

Mr. RICHARDSON. I would like to call your attention and receive an explanation of part of the first section of the bill:

And to supply within a reasonable time at its station or stations from which such shipper gives notice that he desires to ship such freight, at the date designated by such shipper, where that is within a reasonable time, sufficient suitable cars in which to load the same, and to promptly transport the same to its destination when destined to points upon the line of such railroad, then to promptly transport and deliver such freight in such loaded car or cars to the connecting carrier. * * *

Now, for instance, the Louisville and Nashville road, commencing at its beginning point, Cincinnati, and running through to New Orleans—suppose a large number of shippers demanded at the same time cars for shipment of their goods up and down the line, and make the time reasonable. Could any railroad possibly comply with that?

Mr. COWAN. Well, take a shipment of cotton for example—

Mr. RICHARDSON. How would you meet that? How; that is what I want to know.

Mr. COWAN. We provide also in the same section: Provided also, that whenever, by reason of any accidental or unavoidable cause which can not reasonably be provided against by the use of reasonable foresight and diligence, any such railroad company fails to so furnish cars, and uses all reasonable diligence to do so promptly after the happening of such accidental or unavoidable cause, it shall not, as to such failure in such case, be liable to the penalties herein prescribed.

Mr. RICHARDSON. My idea was that that proviso did not have reference to any such contingency as I stated at all.

Mr. COWAN. Yes; it is broad enough.

Mr. MANN. Take the case of the Georgia peach crop. Do you want to have one railroad have enough cars to be able to carry the whole crop?

Mr. COWAN. This does not declare that they shall own them.

Mr. MANN. But how can they get them? They can not get the cars.

Mr. COWAN. It would be impossible for me to tell how a railroad can get cars to handle that business. The railroads are bound to perform the service.

Mr. MANN. That is easy to say. You require a road that pulls that car to get the car back. How are you going to handle the Georgia peach crop under that provision?

Mr. COWAN. But what are we going to do if the railroad company in itself determines when and how it will furnish the cars? To-day the common law requires the doing of this particular thing, but does not fix any penalty for not doing it. The common law requires the furnishing of cars to-day in a reasonable time beyond question, and is recognized in every court in every State in the Union and by the Supreme Court of the United States. We are not requiring any greater duty, but we are fixing a method that defines the duty, defines the circumstances under which it is intended to be performed, and fixes a penalty in those cases, excepting in the exceptional cases, and we give the right to the shipper to go into any State, Territorial, or Federal court and enforce that right with a view to having the railroads perform only their common-law duties.

Mr. MANN. But this compels the railroad to do that which it is not in their power to do, so far as this is concerned.

The CHAIRMAN. This is not simply common-law duty. You take for instance the Georgia peach crop, which requires 5,000 refrigerator cars, and the shipments are made within thirty days. Now, here is a connecting road, a road, say, at the Tennessee line, that connects with some road in Georgia which gathers up, we will say, one-half of that crop. Here is a peculiar car that is used only once for a month in the year, and which the Tennessee road does not use at all because there is no business of that kind originating along its lines. It simply takes the car as a connecting line. Under the provisions of this bill they would be compelled to furnish, we will say, 2,500 cars of this peculiar make which the road does not use at all. I am asking now your opinion as a lawyer, have we the power to compel that Tennessee railroad to comply with the provisions of section 2 of your bill in that respect?

Mr. COWAN. I will answer that in the affirmative, and I am answering it upon my understanding of the meaning of the practical effect of section 2 in connection with the proviso of section 1. Certainly the railroad company could not by law be compelled to do anything that was impossible, but it can be compelled by law to use reasonable diligence in performing the service for which it is incorporated and which it customarily does perform. This law goes no further than to require the doing of the duty, exempting it when exceptional circumstances arise, provided always that it uses reasonable foresight and diligence in performing the service.

Mr. MANN. But the only exception that you make is "accidental or unavoidable cause, which can not reasonably be provided against by the use of reasonable foresight and diligence."

Mr. COWAN. Yes.

Mr. STEVENS. I want to ask your construction of the word "suitable" in section 2; that is, when a furniture car is furnished, will they have a right to demand a furniture back for it, or, as to a vehicle car, would they have a right to demand a vehicle car back?

Mr. COWAN. I do not know enough about the difference between a furniture car and any other car to answer that question. The reason the word "suitable" was put in was to avoid requiring them to deliver back the same sort of a car, because we know cars are suitable for traffic oftentimes that are not of the same sort. The idea was to have it flexible.

Mr. STEVENS. Now, we have this trouble at Minnesota Transfer, and that is one of the great freight transferring points of the country. The railroads coming in there from the west bring in a vast amount of freight for transfer. The western railroads have very large cars. The eastern railroads running from Minnesota Transfer east have small cars. What are you going to do to compel the transfer of small cars for large cars if the eastern roads have not got them?

Mr. KENNEDY. The eastern roads could comply with this law by returning in a reasonable time the car they got.

Mr. COWAN. The same car; yes.

Mr. STEVENS. But, as a matter of fact, it is not returned for six months, or a year, sometimes.

Mr. COWAN. But that ought not to be so.

Mr. MANN. And the car rarely goes back on the same road.

Mr. COWAN. But they can do that.

Mr. MANN. If a car goes through to New York on the New York Central, it does not mean that it will get back by the New York Central. A car that goes to Chicago over the Burlington road, say, and goes to the stock yards gets out of the hands of that road and they are unable to get it.

Mr. COWAN. You are much mistaken about that. Certainly if the railroad starts after it they have it in their possession and get it and could comply with the provisions of this bill by that means if that were necessary; but that is not the question, gentlemen of the committee. Here are simply supposable things that in actual practice never happen.

Mr. STEVENS. They do not happen, you say? They happen every day at Minnesota Transfer. The freight from one to three hundred cars, large cars, is transferred to small cars. They are having trouble and the roads are complaining about it.

Mr. COWAN. Certainly that may happen, but what I am saying is that the difficulty of the railroad to comply with this provision to deliver back a suitable car will never be great, because if it exists at all a suitable car will not be held to be exactly the same sort of car or the same car. Furthermore, if you will notice section 3, you will see that the Interstate Commerce Commission is given power to make rules and regulations with respect to the time and manner in the interchange of cars.

Mr. MANN. They have that power now.

Mr. COWAN. I do not think so. I do not know of any provision of law that gives them that right, excepting for the purpose of preventing discrimination.

Mr. MANN. If they have not that power now under the Hepburn law, then I do not know what that law means.

Mr. COWAN. Then if they have that power, certainly this bill does not hurt anything.

Mr. HUBBARD. Let me put that matter in this way: Assuming that it is the duty of a given railroad to provide equipment sufficient for

its own business; assume that it is able to do that and to do no more; assume that its own business is enough to demand the use of all its equipment. Is it the duty of such a railroad also to provide equipment so that it may make exchange with another railroad who sends loaded cars upon it?

Mr. COWAN. I should answer that in the affirmative; I should say that it is a railroad company's duty to supply not simply cars to transport freight between points on that railroad, but where it encourages—engages in—business on a through route and a through rate, it is its duty, after making that through route and a through rate, to supply the cars. And this law does not require the furnishing of cars to go off its line excepting to load to destination on a through rate and a through route.

Mr. HUBBARD. Then it is the duty of all the railroads participating in the through route to contribute and furnish enough equipment?

Mr. COWAN. Undoubtedly so.

Mr. HUBBARD. Why do you not distribute among them their proportion of that duty?

Mr. COWAN. The law does not attempt to do that. The law simply relates to the performance of the service. It leaves it to the railroads to perform the service, and perform it in the manner it sees fit, providing it is responsible for damages for not performing the service at all.

The CHAIRMAN. But that is not a fair statement. They are not only to perform a service, but they are to enable another company to perform its service.

Mr. COWAN. Ah, but they do not give the other company a whit more than they have a right to demand back. No road can be injured by having to deliver cars to another if it has the right to demand them back.

Mr. STEVENS. Under the law we have the right to compel a road to make a through rate and route whether it wants to or not, and we have the right to compel them to furnish cars to meet that traffic whether they want to or not or whether it is profitable or not. Now, do you not run up against this proposition after all: That a weak road can not do that, if your proposition is correct?

Mr. HUBBARD. Can not carry its share.

Mr. COWAN. I do not think so. I think that if that principle were invoked it means to leave the railroads entirely to decide how much service they shall perform, which the law did not intend. The law does not fix through rates for a railroad, but the railroad fixes the through rates and the through routes themselves, and the Interstate Commerce Commission is not required to fix them; but the Interstate Commerce Commission is given the authority to do it where there is no reasonable through route fixed by the railroad, and only in case the Commission deems it reasonable to do it. So I undertake to say that the Government of the United States will not make the hard and fast rule that will compel them to make a through route where the parties to it can not comply with their obligation to carry it on. You can pick up a thousand and one things that will be little objections to it, that is easy; but people want something done to define the duties of railroads and fixing the penalty for not doing them, and that is what we are here for.

Mr. HUBBARD. It is not a question of power?

Mr. COWAN. There is not any doubt about the power. It was seriously argued that it was against the Constitution to pass the interstate-commerce act, and all that, but that argument originated mostly from those who did not want the act to pass and not from those who did.

Mr. MANN. Isn't it just as much that there are many cases where this law will not work fairly, and therefore we ought not to consider those cases?

Mr. COWAN. I say there are not any cases in which this law can not be made to work fairly.

Mr. MANN. Take this case: Say a railroad has 10,000 cars of its own in use on the line of its road and in its through traffic. It has a thousand cars on its line for the use of its own customers. It receives requests from its own customers for the use of a thousand cars. If it does not furnish them, it is subject to penalty under this bill. But at the same time it receives 1,000 loaded cars from another company with a request for a transfer back of the 1,000 cars. In that case would not this road be "between the devil and the deep sea?"

Mr. COWAN. Not at all. Just try to work out how it could be worked under this bill and you will find a way.

Mr. MANN. Which way?

Mr. COWAN. I will tell you. The railroad company which received 1,000 cars, when it already had 1,000, then has 2,000 cars on its lines. If it is on a through route, the persons who are shipping that freight are just as much its customers as those who load the freight on its lines, and when it delivers its 1,000 cars to the connecting road it has a right to demand back just as many, and it would still have the same number of cars on its lines.

Mr. MANN. They go on through to the end, and the cars can not start back until they get through to the end; is that your notion?

Mr. COWAN. This does not fix the obligation to furnish them on that day and to interchange them on that day. It is to exchange them within a reasonable time, if demanded, and under rules to be provided by the Interstate Commerce Commission.

Mr. MANN. Regardless of whether they have them?

Mr. COWAN. They are bound to have them, because they do not have to give back any more than they get.

Mr. STEVENS. How are they going to help it if they are compelled to take the freight? If you tender them 100 cars of freight they are compelled to take it under the through routing?

Mr. COWAN. Undoubtedly.

Mr. STEVENS. Then they have got to give 100 cars back. Suppose they can not get them. Suppose 1,000 cars of beer start from Milwaukee over the Chicago, Milwaukee and St. Paul Railroad bound for Manila, as is frequently the case. The Great Northern or the Northern Pacific do not have beer cars, but the Chicago, Milwaukee and St. Paul Railroad do have them, because they do an immense business with them. What is the Great Northern and the Northern Pacific going to do? The cars are refrigerator cars of peculiar construction that are not adaptable for other freight. What are those connecting railroads going to do?

Mr. COWAN. They will have to deliver the cars back within a reasonable time, providing the Chicago, Milwaukee and St. Paul road demands them. If they undertake to handle the transporta-

tion of that sort of freight, why should not they be compelled to deliver back in a reasonable time as many cars as they get from some road? The "reasonable time" is the tide that fluctuates according to circumstances, and the law does not intend that they shall be compelled to do the impossible.

Mr. MANN. Your theory is that a railroad having an east and west line would have the same number of cars going east as going west?

Mr. COWAN. I would not say just the same number of cars. But, gentlemen of the committee, the railroads did do this for a long time. They are not the only people to consider. What is going to happen to these people having stock and grain and who can not ship it, if there is not a law to define what is going to be the duty of the railroad to the shipper?

Mr. MANN. I think you mistake the temper of the committee. We are trying to consider the specific propositions that you present, but when we take up the specific cases and try to analyze them, you criticise the committee.

Mr. COWAN. I am taking up time of other gentlemen and yourselves in a discussion that would consume a great deal of time and probably not reach the point. If we sit down together, which I would be glad to do with any member of the committee, and undertake to see how it can be worked out, we can do that, in my opinion, and if the provisions of this bill are not sufficient, we can make them sufficient.

Mr. RICHARDSON. As I understand from you the purpose of your bill, as you have explained it, the foundation is, that the railroads must be required to perform their duties, subject to rules, regulations, and provisions of common sense, and those that the Interstate Commerce Commission shall provide.

Mr. COWAN. That is the intention of the language.

Mr. RICHARDSON. That is the purpose of it.

Mr. COWAN. Yes; that undoubtedly is the purpose.

Mr. RICHARDSON. That is, you lay down the general principle, but do not meet all contingencies.

Mr. COWAN. It would be impossible for us to try to do that, of course. We have got to make it sufficiently flexible to do that; but I will say, on the part of the Live Stock Association, that there is no intention to put any hardship on the railroads, absolutely. We do not want anything excepting what is fairly reasonable, what you know these railroads can perform if the law requires them to do it.

The CHAIRMAN. You think the Interstate Commerce Commission has not the power to remedy this evil that you are here now to remedy. Why is it not a great deal better, if they have not the power, to give them that power, so they can make their rules that will be applicable to particular cases where the greatest grievance occurs?

Mr. COWAN. That is just exactly what the third section attempts to do; but before doing that you must remember that the Interstate Commerce Commission can not be given power to make law. You must first, in the law, define the duties; you must fix a penalty in the law, and you must require the railroad's obedience to the orders of the Commission. And then you can give the Commission the power to regulate the details, and that is drawn as broadly as we knew how to draw it in the third section.

Mr. RICHARDSON. Why give the Attorney-General the power to fix the penalty instead of fixing it in the law?

Mr. COWAN. We fix the penalty in the law, and give the power to the Attorney-General to direct suits for forfeiture.

Mr. MANN. Who drew this bill?

Mr. COWAN. I drew this bill, with Judge Clements of the Interstate Commerce Commission.

Mr. MANN. Did you consider a lot of these other bills?

Mr. COWAN. I had several bills at that time. This bill was drawn a year ago. We thought better to leave the demurrage matters to the Commission, as in the bill, as well as the speed limit, in order to meet the varying conditions of traffic.

The railroads of Texas agreed with me on this bill, we had it up before a conference committee of the house and senate, it was passed at the last session of the legislature, and it is now on the statute books of Texas, the railroads believing it was an advantage to them to do it. Hon. J. W. Terry, attorney for the Santa Fe lines, and Hon. N. A. Stedman, of the Gould lines, representing all the railroads at Austin during the session of the legislature, agreed to this and substituted it for all bills pending.

Mr. MANN. I suppose you are in a heavenly condition in Texas.

Mr. COWAN. The difference is that the laws there can only apply to local traffic. Our live-stock traffic is 90 per cent interstate. The difficulty lies in the fact that we can get the State traffic carried, and we are doing it, without trouble and without difficulty, but we could not get the interstate traffic moved without further help.

Mr. ESCH. Under section 4 do I understand that the shipper that is aggrieved can go into a State court and make this Federal statute a basis for action for damages and reparation?

Mr. COWAN. Do you mean can Congress authorize that?

Mr. ESCH. Yes.

Mr. COWAN. I think there is no doubt about that.

Mr. ESCH. It is an unusual proceeding, is it not; have we had any other instance of that?

Mr. COWAN. I don't know that I can point you to an instance at this time.

Mr. STEVENS. Under some of the bankruptcy laws, probably.

Mr. COWAN. Yes; I suppose so. I will say that the Supreme Court of the United States has held that you may have a right to sue and recover damages in a State court, although the foundation of the right is a Federal statute.

Mr. ADAMSON. I presume that right has nothing to do with jurisdiction; the right is under the natural law.

Mr. COWAN. It was not intended to give this a broader significance than to make it apply to violations of duty imposed by virtue of this act, or of the rules of the Commission made in accordance with this act.

Mr. ESCH. You use the words "Rules and regulations of the Commission herein provided for."

Mr. COWAN. It is intended by that that if the language does not cover all, it is intended to make it so. This has been carefully considered by Judge Smith and Senator Culberson, Commissioner Prouty, and some other members of the Commission. We do not intend to put any hardship upon the railroads, beyond the matter of doing those duties which are recognizable everywhere. But we do fix a

penalty, which is now unprovided for by law, but that penalty, to the benefit of the shipper, is only the attorney's fees. A man shipping a carload, and suffering a \$50 loss, can not go into court unless he can recover the attorney's fees. It is customary in fire cases, and we have it in insurance cases in Texas. It is probable that they have it in other States. It is a reasonable provision that makes the person obligated to the duty to respond to the full measure of the loss. We did not even fix the penalty to go to the shipper, but left it to the Commission and the Attorney-General to invoke the penalty where the railroad has evidently not performed its duty.

Mr. KENNEDY. With reference to the jurisdiction of the State courts. We could not take away from the State courts the right to enforce any penalty or action, no matter how it arises.

Mr. COWAN. It does not take away the right to sue on a Federal statute and recover damages that may happen and fix a penalty equal to the attorney's fees. If it simply said, "Attorney's fees to be assessed as a part of the costs," probably that could not be done, because that is a remedy that must be determined by the State law. But the language of the act is "equal" in amount.

Mr. HUBBARD. You say that two or three years ago the railroads did this, presumably because of their interest to do so. Has their interest changed?

Mr. COWAN. We think not.

Mr. HUBBARD. Has their disposition, so far as you know, changed since that time?

Mr. COWAN. It has, judging from what has happened.

Mr. HUBBARD. Do you know of any reason why, their interests remaining the same and it being their interest now to do what they used to do—do you know of any reason why they are disposed to change?

Mr. COWAN. They would do it to-day, undoubtedly, were it not for the fact that they are not able to come to any agreement about it which they can enforce; and much testimony has been taken on that.

Mr. HUBBARD. And then the trouble is not simply that the railroads have not the cars or can not get the cars, but there is, in your opinion, the additional trouble—or perhaps the only trouble—that they have been unable to agree among themselves upon a system that will work?

Mr. COWAN. Unable to agree. At all events they do not do it. We go no further; they simply do not do it.

Mr. HUBBARD. But so far as you know it is still to their interest to do it, and so far as you know they are still attempting to do it?

Mr. COWAN. Yes, sir.

Here is the report of the Interstate Commerce Commission, which practically shows that.

I wish to file statistics showing absolutely that there is less train mileage to-day per mile of line than there was in 1900. I wish to file these statements with the committee.

I will now ask the committee to hear from the other gentlemen.

Following are the statements filed by Mr. Cowan:

The Interstate Commerce Commission investigated the matter pertaining to car shortage and other insufficient transportation facilities a little over a year ago, and in doing so took evidence extensively at various western points, which is printed, and on the hearing which

the Senate committee accorded me last January on this bill I requested that the evidence taken by Commissioner Prouty at St. Louis and Kansas City be asked for and printed in the proceedings of this committee, which was accordingly done; and I shall consider that evidence as having been taken and point to some of the material matters of fact developed at the hearing.

The evidence taken by Commissioners Lane and Harlan at Minneapolis and Chicago was printed by the Interstate Commerce Commission and I refer you to the same for information.

With respect to the latter hearing, Commissioners Lane and Harlan made a report, which is to be also found in the printed copy of the hearings.

Time forbids that I should go extensively into the matters reported, but I note the following excerpts from it.

Discussing conditions respecting handling of grain in the Dakotas and Minnesota and inability of shippers to procure cars, Commissioner Lane said (p. 6):

If this condition was brought about by an actual shortage of cars, such defense was not presented by the railroad officials who appeared and testified, nor was it contended that the crop of this year exceeded expectations or was in any way abnormal.

To indicate my contention that it was not so much a question of car shortage as car performance, I note the statement of Commissioner Lane (p. 6):

Neither President Hill, of the Great Northern, nor President Elliott, of the Northern Pacific, urged shortage of cars or locomotives as an excuse for their inability to handle the grain crop, but confessed with frankness that they were using all the cars that they could handle. Thus what appeared to the farmer as a car shortage was not such to the railroad man. To him there was a shortage in adequate terminals, double tracks, side tracks, yards, and low grades.

It seems that Mr. Hill, of the Northern Pacific, at several times insisted on the insufficient facilities for handling the business and insisted on the necessity of investing some billions of dollars that was impossible to procure in order to improve the service, and in the course of his statement, as quoted by Commissioner Lane, he said:

During the time from 1895 to 1905 the business of the country—the tons moved 1 mile—increased 110 per cent, and the facilities—the increase of facilities for doing the business and handling the miles—increased 20 per cent in ten years, or 2 per cent per annum.

If by the use of "facilities" he means cars and locomotives, which the public would generally understand, as I shall elsewhere show that cars and locomotives, considering capacity, between 1900 and 1906, the period covered by my figures, increased as much as the traffic and in most cases more, except on three or four lines of railroad, which is explainable by the fact of the enormous increase in traffic on those particular lines.

Mr. Hill's statement, therefore, of the small amount of increase in facilities is not true except in so far as he means trackage. As to trackage there was no obstacle to the construction of more yards and sidings had these systems of road been disposed to spend their money that way, as the accounts of every system of road will show ample and sufficient funds to have done it.

As to the need of additional track mileage I shall show that with two or three exceptions on 19 or 20 roads leading west from Chicago and St. Louis, covering the trans-Mississippi country, the use of main-

line tracks for hauling trains was less per mile of line in 1906 than in 1900, there being an actual decrease in nearly all cases of the number of train miles per mile of line and the number of locomotive miles per mile of line.

In the course of his report Commissioner Lane shows that it was the nonuse of equipment and fully supports the contention which the proponents of this bill make that frequent use of equipment would relieve the situation. I quote as follows from his report in that particular:

Many credible witnesses who appeared at both Minneapolis and Chicago gave testimony that a great and immediate improvement in transportation service in the Northwest might be effected by a change in the methods of use of present equipment without waiting for the enormously costly and practically unattainable improvements suggested by railway officials. The Commission was told of loaded cars standing from two to twenty days at the point of origin; of empty cars lost in congested terminals or lying unused, sometimes in solid trains, for equal lengths of time; of engines broken down from overwork; of trains torn in two by heavy loads; and of train crews working extremely long hours without rest, although making only ordinary mileage. Grain receivers at Minneapolis and Duluth presented long lists of loaded cars that had been twenty or more days in moving 250 miles, and that at Duluth had again been delayed days and even weeks in switching after arrival.

All the officials and employees of the Great Northern and Northern Pacific roads giving testimony agreed in saying that engines were not loaded too heavily and that a lightening of train loads would not aid them to give better service. Yet one of these same officials also testified that any increase in train tonnage would be likely to be followed by the breaking of trains, and another added strength to the conclusion that tonnage rather than speed is the result sought by testifying that from ten to fifteen days is a reasonable time for a car of dead freight to move 350 miles passing through two division points.

Vice-President Pennington, of the "Soo" road, took direct issue with this theory of railroading, saying that in periods of congestion he found the wise plan to be to reduce train tonnage, thus making better speed, increasing engine mileage, and actually moving more tons of freight in a month without increasing the equipment. Similar testimony was given by a number of experienced railroad men at the Chicago hearing. Two theories of railroad operation were thus brought into opposition.

To many witnesses at both Minneapolis and Chicago it was obvious that if cars were made to move faster and were kept moving, their efficiency would be greatly increased. Car shortage, in other words, may result as much from lack of wise methods in handling the cars which a company possesses as from a deficiency in the number of cars or a lack of tractive power. If engines are made to haul their maximum, it is manifest that their capacity is limited to the highest grade over which they are compelled to pass. If trains are made up of so large a number of loaded cars that the engine is reduced to its minimum speed, these cars during their time of transit are withdrawn from the general car supply. From the statistics presented it would appear that the policy of hauling maximum loads on long hauls is one that produces dazzling figures of ton mileage which should greatly gratify the railroad stockholder did not the trouble some problem arise of the carrier's duty to render prompt service and make the fullest possible use of the railway and its facilities. Maximum tonnage and maximum service are not necessarily equivalents. A railroad which lives by virtue of a public grant and the exercise of quasi-public powers is primarily obligated to discharge its functions with an eye to the welfare of the public which it serves and to avoid any policy of operation which, no matter how profitable to the stockholder, may result injuriously to its dependent communities.

In support of the point that the Commission be vested with power to make rules regulating the unloading and release of equipment, the following is quoted from Commissioner Lane's report (p. 14):

If it be true that any considerable part of the shortage of car service from which the country is suffering is due to the excessive and unnecessary time allowed by railroads, it is manifestly within the power of the railroads themselves to correct such abuse. If the railroads, either through fear of losing traffic to each other or through indifference or inability, do not enact and enforce the needed rules, they will not be able to reasonably object should power to make such rules be vested elsewhere.

As a conclusion, Commissioner Lane shows that there are sufficient cars and locomotives, and I quote his statement taken from page 14 of his report:

It is the contention of men most conversant with existing equipment that there is a sufficient supply of both cars and locomotives to meet present demands were such a plan adopted as would permit a free interchange of cars between railroads and an arbitrary and common control of all equipment in its handling and distribution.

While the Commissioner doubtless had some hesitancy in suggesting the giving of power to the Commission to regulate the matter of exchanging cars, yet his belief in that particular arising from his investigation is plainly indicated by the following quotation taken from page 15 of his report:

While the railroads may fix the price that shall be charged for the use of their cars by other roads, it may become advisable for the protection of those roads which, realizing their duties as common carriers, furnish themselves with adequate equipment that power be vested in this Commission to make rules governing the interchange of cars and that Congress also enact a penal law under which railroads may be punished for confiscation of foreign equipment.

Upon the subject of reciprocal demurrage as a remedy, both Commissioners Lane and Harlan seem disposed to think that it would not operate as a complete remedy, but their expressions, examined in the light of the provisions of this bill, which proposes to authorize the Interstate Commerce Commission to establish a system of reciprocal demurrage, and until that is established that \$1 per car be named as the amount, seems not to be at variance with the ideas contained in the report of these two Commissioners. Their report seems to be directed at the point that a reciprocal demurrage law would not reach the evil, as there must be duties and obligations respecting the performance of the transportation beyond a mere inducement which would result from an establishment of a reciprocal demurrage rule.

The conclusion is thus stated by Commissioner Lane on page 18:

Manifestly it is of little value to a shipper to be given a car if that car, when loaded, is not moved promptly to destination. Therefore, the conclusion is inevitable that reciprocal demurrage alone will not insure better railroad service when the movement is over more than one system of railroad. Such a law or rule must be supplemented by some other rule or law under which the originating carrier may be insured of prompt return of the cars which it delivers to its connections.

The Commissioners quote from a decision of the Supreme Court of the United States in the Texas case involving the penalties fixed by the State for failure to furnish cars. It must be noted in that connection that the expressions used by the Supreme Court in the case (*H. & T. C. Railroad Company v. Mayes*, 200 U. S., 321) had reference only to the limitations upon the police power of the State to fix penalties for not furnishing cars for interstate business, and it was only upon the ground that the State law gave no latitude for unavoidable causes which could not be provided against by the use of reasonable foresight and diligence that the majority of the court held the law to be unconstitutional as applied to interstate commerce, on the ground that the law was unreasonable. It must be understood that testing the power of a State to regulate interstate commerce under its police power, the standard of reasonableness of such a law is always applied. That standard is not applied, of course, to the power of Congress to enact law to regulate interstate commerce. Only the constitutional limitation against taking property or doing that which amounts to taking property without just compensation applies to the power of

Congress as a limitation. I submit that, without question, the limitations named in the decision mentioned are plainly not applicable to an act of Congress. Neither do I understand the Commissioners to suggest that it is.

As indicating that there was a woeful lack of proper management, Commissioner Harlan said, at page 21:

It is reasonably clear that there can be immediate improvement in the switching of cars in and out of terminals. The delay of many days in setting a car at the unloading point and in getting the loaded car out of the switching district and on its way to destination is often not only unexplained, but apparently inexcusable.

Reform in most of these matters lies wholly in the hands of the railroad companies and the shippers themselves. Possibly if more extensive powers were lodged in the Commission in dealing with terminal conditions it might result advantageously.

And again, as indicating still further the importance of regulating the matter of interchanging cars, Commissioner Harlan said, at page 22:

Some railroad men of prominence appearing before us seemed to think that the more effective regulation of the interchange of cars by carriers would of itself go far toward remedying the present car shortage. There seem to be strong reasons for thinking that the proposed car pool or car clearing house would result in a more effective car service. If some such adjustment can not be reached by the companies themselves, it may be that legislation will become desirable and necessary.

All efforts, if any considerable efforts have been made, in the direction of the proposed car pool to serve some purpose have failed, and hence the importance of legislation of the character embraced in this bill may be fairly considered as recommended by both Commissioners Lane and Harlan as a result of their investigations.

If operating expenses have increased, if stocks and bonds declined, why blame the public? It furnishes the traffic; any decline is merely temporary.

The railroads have so many smart men hired and so many are on waiting list that they are not lacking apologists, defenders, advocates galore, everywhere all the time. That is why they come forward with poverty plea.

If law has interfered with railroad officials, commonly called "mag-nates," continuing their money making by the millions, by issuing, selling, exchanging, and otherwise manipulating bonds and stocks, it does not follow that the railroad corporation, as such, has suffered. The bitter utterances of financial heads, so called, in our railroads are in their personal and not in their representative capacity.

Who has hurt the railroad corporations, rendered them unable to pay dividends in some cases, unable to perform a good service, and brought conditions of financial disaster, possibly, on some of them? Was it the people who furnish the business and "pay the freight?" Was it the luckless and innocent stockholder whom everybody seems so anxious to protect? Not by any means. It was by the "financial heads" increasing the indebtedness of the roads and directly and indirectly pocketing the money. Not in interest of the corporation as such, but of themselves as individuals and those whose interest is similar. Do you suppose they care anything for that entity created by law called the corporation, when disassociated from their vehicles of "getting there?"

Now we want to help the railroad as a corporation, but we owe no allegiance to the railroad king who acts toward the public as if he were "king," indeed. We will help the corporation. We can't help the other fellow in his devious ways.

42 CULBERSON-SMITH CAR AND TRANSPORTATION SERVICE BILL.

The tabulated statement referred to by Mr. Cowan in his remarks is as follows:

[Taken from official annual reports filed with Commission.]

Road.	Miles.	Per cent yards and sidings.	1,000-ton miles per mile of line.	Tons per train mile.	Freight cars per mile of line.	Train miles per mile of line.	Miles per car per day.	Number of locomotives.	Mileage freight locomotives per mile of road.	Number stock cars owned.	Live stock tonnage.	Total freight cars.
A., T. and S. F.:												
1900.....	4,806	21	506	215	4	2,055		791	2,896	2,520	872,637	24,269
1906.....	5,043	26	723	290	8	2,146		1,458	2,605	3,678	723,671	39,840
G., C. and S. F.:												
1900.....	1,127	18	405	201	1.5	1,948	75	162	2,540	46	143,108	1,741
1906.....	1,423	28	566	265	1.5	2,030	100	175	2,364	14	126,797	2,283
C., R. I. and P.:												
1900.....	2,455	18	455	181	4.6	2,359	30	572	2,564	2,493	725,443	16,812
1906.....	4,938	20	521	245	5.2	2,013	27	1,233	2,013	3,007	901,902	35,349
Mo. P. Rwy.:												
1900.....	3,164	18	371	189	5	1,735	20	320	2,049	727	523,034	16,023
1906.....	3,491	22	531	246	6.9	2,007	17	489	2,167	3	664,065	24,222
Tex. and Pac.:												
1900.....	1,420	20	497	175	3.4	2,327	38	225	2,371	164	113,428	5,261
1906.....	1,756	25	492	217	4.8	2,270	27	334	2,314	458	130,983	8,729
Frisco:												
1900.....	1,401	19	372	154	3.9	2,357	31	205	2,404	716	128,305	5,591
1906.....	4,738	24	471	219	5	2,041	22	785	2,210	684	365,972	24,134
S. P. Co.:												
1900.....	5,624	25	618	296	3.9	1,938	34	853	2,447	905	329,958	22,285
1906.....	5,406	33	687	334	4.6	1,922	34	1,167	2,447	1,966	344,853	25,409
G. H. Y. S. Ry.:												
1900.....	918	17	997	287	3.6	3,430	53	150	4,239	206	67,399	3,384
1906.....	1,316	21	841	393	3.5	2,049	47	277	2,255	298	108,346	4,466
M., K. and T.:												
1900.....	2,222	18	530	197	4.3	2,692	37	264	2,770	506	385,422	9,669
1906.....	3,042	21	460	217	5.5	2,072	24	470	2,368	1,356	310,144	16,824
C., B. and Q.:												
1900.....	6,412	20	477	195	5.9	2,325	34	951	2,827	5,291	(a)	37,236
1906.....	8,677	24	732	370	5.4	1,829	32	1,435	2,081	6,631	(a)	46,527
C. and N.W.:												
1900.....	5,571	30	734	254	7.7	2,670	24	1,060	3,656	3,381	916,865	40,893
1906.....	7,553	32	694	285	7.3	2,278	22	1,342	2,987	5,075	1,319,855	54,911
N. Pac.:												
1900.....	5,036	18	467	317	4.5	1,284	28	594	1,807	837	150,915	21,416
1906.....	5,793	24	971	400	6.6	2,268	31	1,005	2,949	2,027	283,789	36,099
Grt. Northern:												
1900.....	4,076	15	421	321	3.6	1,145	28	463	1,941	477	122,579	14,770
1906.....	5,183	22	870	544	5.9	1,521	28	734	2,004	1,208	219,630	30,477
C. M. and St. P.:												
1900.....	6,461	23	525	205	5.6	2,367	29	837	3,016	2,903	836,786	36,046
1906.....	7,267	27	649	271	5.4	2,214	31	1,016	3,124	2,830	1,092,509	39,429
Colorado So.:												
1900.....	1,141	19	226	152	3.7	1,389	17	148	2,024	367	67,950	4,259
1906.....	1,134	22	501	269	5.9	1,664	17	172	2,402	555	97,058	6,758
Ft. W. and D. C.:												
1900.....	453	11	226	138	2.2	1,631	37	32	2,086	177	86,549	1,004
1906.....	454	16	555	280	2.6	1,996	51	48	2,362	248	83,207	1,192
D. and R. G.:												
1900.....	1,656	20	344	145	5	2,159	23	311	3,474	694	81,896	8,359
1906.....	2,532	21	435	213	5.4	1,799	18	484	2,555	1,561	122,164	13,412
I. and G. N.:												
1900.....	825	14	320	165	2.8	1,820	39	82	1,889	25	45,029	2,363
1906.....	1,159	19	397	271	3.2	1,724	36	135	1,807	98	71,603	3,714
St. L., I. M. and S.:												
1900.....	1,773	22	786	250	5	3,028	39	239	3,272	786	109,097	8,935
1906.....	2,459	33	932	374	6.9	2,389	27	456	2,505	810	81,703	16,770

a About 100,000 cars.

CULBERSON-SMITH CAR AND TRANSPORTATION SERVICE BILL. 43

[Basis of statistics from Statistical Department of Interstate Commerce Commission.]

Tons 1 mile.

	1900.	1906.		1900.	1906.
Gould Lines ^a	4,722,598,217	7,210,272,098	U. P. System.....	2,650,996,131	5,353,374,071
Santa Fe Ry. System.....	3,747,116,069	5,877,702,994	C. and N. W. Ry....	3,855,159,649	5,156,074,115
Rock Island, Frisco System.....	3,151,190,018	5,512,366,946	C. B. and Q. Ry....	3,012,412,729	6,303,883,569
M. K. and T. Ry. System.....	1,176,679,464	1,400,873,438	C. and S. Ry.....	361,673,581	822,871,531
St. Paul.....	3,357,456,584	4,663,808,007	N. P. Ry.....	2,205,317,271	5,245,260,080
S. P. Ry. System.....	3,459,211,175	3,741,887,878	Gt. N. Ry.....	1,722,663,402	4,484,575,584
				33,422,694,290	55,772,660,317

Increase 66 per cent.

^a Mo. Pac. Ry., Texas and Pacific Ry., St. L., I. M. and S. Ry., St. L. and S. W. Ry., I. and G. N. R. R., D. and R. G. Ry.

	1907. ^b		1907. ^b
C. and S.....	907,479,591	C. and N. W.....	5,428,771,597
G. N.....	4,920,792,956	C. M. and St. P.....	5,155,662,231
N. P.....	5,504,444,088	S. P.....	4,205,230,298
C. B. and Q.....	7,114,843,286	U. P. System.....	5,704,061,535
M. K. and T.....	1,709,784,842		

^b Figures for 1907 not complete. Principal data made up by Interstate Commerce Commission statistician before Reports for 1907 were filed.

Cars.

	Stock cars.		Freight cars.		
	1900.	1906.	1900.	1906.	1907.
Gould lines.....	3,169	4,321	46,428	76,951
Santa Fe.....	3,286	4,181	28,338	43,369
Rock Island, Frisco.....	3,722	3,399	33,068	80,052
M. K. and T.....	506	1,356	9,649	16,824	18,802
St. Paul.....	2,903	2,830	36,046	39,429	41,101
S. P.....	905	1,966	22,285	23,409	25,474
C. and N. W.....	3,381	5,075	40,883	54,911	57,413
C. B. and Q.....	5,291	6,663	37,236	46,527	46,840
U. P. System.....	3,074	4,186	22,157	23,639
N. P.....	837	2,027	21,416	36,099	42,320
G. N.....	477	1,208	14,770	30,477	35,893
S. P., Texas.....	424	1,030	11,104	13,734
Total.....	28,519	^a 41,245	328,613	^b 406,369

^a Increase 45 per cent.

^b Increase 54 per cent.

Live stock tonnage.

	1900.	1906.		1900.	1906.
Gould lines.....	953,515	1,102,171	C., B. and Q.....	1,000,000	1,250,000
Santa Fe.....	1,263,961	1,203,550	C. and S.....	154,409	180,265
Rock Island, Frisco.....	1,060,919	1,256,494	N. P.....	150,915	283,799
M. K. and T.....	310,144	385,422	G. N.....	122,579	219,630
St. Paul.....	836,786	1,092,569	S. P., Texas.....	170,573	235,915
S. P.....	329,958	344,853			
C. and N. W.....	916,865	1,319,858		7,270,714	8,874,526

Increase 23 per cent.

44 CULBERSON-SMITH CAR AND TRANSPORTATION SERVICE BILL.

Track mileage.

	1900.	1906.		1900.	1906.
Gould lines.....	10,629	12,941	St. Paul.....	6,462	7,268
Santa Fe.....	7,767	8,826	C. and N. W.....	5,571	7,453
Rock Island-Frisco.....	6,952	10,044	U. P. System.....	5,427	5,403
So. Pac. Co.....	5,624	5,406	C. and S.....	1,141	1,134
	918	1,316	N. P.....	454	454
	508	695	G. N.....	5,037	5,793
S. P. in Texas.....	191	191		4,076	5,193
	324	356			
	326	446			
M., K. and T.....	2,222	3,042	Total.....	63,629	75,971

* Increase about 20 per cent.

Statement showing equivalent of increase in actual loading, expressed in number of cars, 1906 over 1900.

	Capacity— per cent of increase.	Total cars in 1906.	Capacity— equivalent increase in cars.	Equivalent compared, 1906 to 1900.	Per cent of increase of aggregate capacity and number.
Mo. Pac.....	30	24,222	7,266	31,488	152
Iron Mountain.....	30	16,770	5,031	21,801	132
Texas and Pacific.....	18	8,789	1,582	10,371	97
I. and G. N.....	20	3,714	742	4,456	90
St. L. and S. W.....	20	9,940	1,989	11,929	130
D. and R. G.....	58	13,412	7,779	21,191	91
Total.....		76,847	24,389	101,236	111
Santa Fe.....	13	42,369	5,508	47,877	70
Rock Island, Frisco.....	20	90,052	16,010	96,062	191
M., K. and T.....	9	16,824	1,514	18,338	81
C., M. and St. P.....	17	39,429	6,703	46,132	28
S. P.....	5	25,409	1,270	26,679	15
C. and N. W.....	16	54,911	3,294	58,205	42
C., B. and Q.....	36	46,527	16,750	63,277	70
C. and S.....	50	7,950	3,975	11,925	126
N. P.....	30	36,096	10,829	46,925	120
G. N.....	36	30,477	10,972	41,449	87
S. P. in Texas (estimate).....	20	15,734	3,147	18,881	70

Average of the 18 lines approximately 94 per cent.

Number of locomotives.

	1900.	1906.	1907		1900.	1906.	1907.
Gould Lines.....	1,387	2,681		C., B. and Q.....	951	1,475	1,575
Santa Fe.....	1,085	1,651	1,769	C. and S.....	180	220	273
Rock Island-Frisco.....	983	2,314		N. P.....	594	1,005	1,255
M., K. and T.....	264	430	505	G. N.....	463	734	869
St. Paul.....	837	1,016	1,017	S. P., Texas.....	370	528	
U. P. System.....	775	1,051					
S. P.....	853	1,167	1,172	Total.....	9,802	15,614	
C. and N. W.....	1,060	1,342	1,422				

Increase 60 per cent.

We have to present to you, should you desire them filed, which perhaps is unnecessarily encumbering the record, letters of recent date to show the interests which demand the enactment of these principles which we advocate, as follows:

The Southern Cypress Manufacturers' Association of New Orleans, La., George E. Watson, secretary.

The Commercial Club of Topeka, Kans., T. J. Anderson, secretary.

The Southern Wholesale Grocers' Association, Birmingham, Ala.

The Salina Commercial Club, Salina, Kans., W. F. Grosser, secretary.

The St. Paul Board of Trade, W. H. Patten, secretary.

The Receivers and Shippers' Association, Dayton, Ohio, W. B. Moore, secretary.

The Citrus Protective League, Los Angeles, Cal., A. G. Kendall, secretary.

The Coal Dealers' Association of Iowa and Nebraska.

The Trans-Mississippi Commercial Congress indorsed this proposition by resolutions duly passed at its annual convention held at Muskogee, Okla., in November last,

We have a number of letters from important shippers in various parts of the country to the same effect.

STATEMENT OF MR. MURDO MACKENZIE, OF TRINIDAD, COLO.

Mr. MACKENZIE. I wish to file with the committee the resolution passed by the American National Livestock Association at its meeting in Denver on the 21st and 22d of January, 1908.

Following is the resolution referred to:

AMERICAN NATIONAL LIVE STOCK ASSOCIATION.

[Adopted at Denver, Colo., January 21 and 22, 1908.]

Resolution No. 1.—Relative to furnishing cars to transport live stock and other perishable freight and to give prompt and efficient service.

Whereas many of the railroads have failed to supply themselves with sufficient facilities to perform their duties as common carriers in receiving and transporting freight throughout the western half of the United States, where live-stock raising and feeding and shipping is a most extensive and important industry; and have failed to furnish cars in which live stock could be shipped to market to such an extent that tens of thousands of cattle and sheep could not, during the past season, be marketed; and have failed to supply cars for such great length of time after orders have been given therefor, that a large proportion of the live stock marketed were so much delayed, generally for weeks, and in many instances for months, that they lost seriously in flesh and condition; and after cars were supplied and live stock loaded have moved the same at such slow rate of speed and otherwise delayed shipments as to seriously damage such live stock; and

Whereas this treatment of the live-stock industry of the country has been growing worse year by year and has cost the producers millions of dollars, reaching the appalling condition during the past season of forcing many shippers practically out of business, probably bankrupting some and seriously injuring and demoralizing the entire live-stock business, particularly in the Southwest; and

Whereas there are as a whole more stock cars and have been fewer shipments the past season than heretofore, and it is our belief, from observation, experience, and from what we can ascertain, that there has been a reckless indifference of the railroad management in the localities where this disastrous condition has existed in supplying themselves with stock cars or in utilizing what they have been able to obtain, to transport live stock, either permitting the cars to stand idle, as has often been the case, or using them in transporting other traffic at a time when live stock was being held for shipment and fast depreciating in value, thereby producing a wanton destruction of property; and

Whereas there exists no adequate means of compelling the railroads to perform their duty to furnish cars and perform the transportation service in reasonable time, if at all, and no means of securing adequate redress for failure of the railroads to perform those duties, where they fail to do so; and

Whereas there is no way by which one railroad can compel its connections to exchange empty cars for loaded cars of live stock, or to receive and forward live stock in the cars in which they are loaded; and

Whereas the refusal of railroads to permit cars to go off their own line and to deliver cars to other lines has to a great extent impaired the efficiency of the cars which should

be available, and placed it beyond the power of many railroads to secure cars or a return of cars or exchange of cars, and in this way demoralized the railroad service; and

Whereas it is our earnest belief, concurred in by all those who investigate the subject, that the free exchange of cars and the through and rapid transportation of live stock is the only way in which this unbearable condition can be relieved; and

Whereas we believe that if left to themselves the railroads will not better conditions, at least not relieve them, in absence of some law which compels a free exchange and interchange of cars to enable each road to get back empty cars for loaded cars delivered to its connections, and a law which fixes penalties to compel the furnishing of cars to shippers and the exchange and interchange as between railroads; and

Whereas there has been introduced in the Senate of the United States by the Hon. C. A. Culberson, United States Senator from Texas, a bill numbered S. 3044, declaring it to be the duty of railroads, subject to the act to regulate commerce, to provide sufficient facilities to perform with dispatch their duties as common carriers in furnishing cars and transporting all freight, including live stock, and to promptly transport same, and to exchange loaded and empty cars, and otherwise to provide sufficient facilities, fixing penalties for failure of such duties, and giving to the shipper the right to recover in any court of any State or Territory having jurisdiction his damages and attorney's fees, and in case of failure to furnish cars for shipping live stock, double the damages sustained; and also empowering the Interstate Commerce Commission to enforce penalties for violation of the act and to make rules and regulations with respect to the time and manner of giving notice for cars, furnishing cars, exchange and interchange of cars, and all needful rules and regulations in the administration of such law and to compel its observance, and providing rules applicable to the different classes and kind of freight and the varying circumstances and conditions of shipment; and

Whereas we believe that the enactment of said bill into law will speedily remedy the deplorable conditions herein set forth, and that some such measure is imperatively necessary: Now, therefore, be it

Resolved, By the American National Live Stock Association, in convention assembled in Denver, Colo., January 21. and 22, 1908, that we heartily indorse said bill and recommend to our Senators and Congressmen from all of the Western States from which this association draws its membership that the same be passed; and be it further

Resolved, That copies of this resolution be promptly printed and sent to each of the western Senators and Congressmen, with the request that the same be read in both the Senate and the House of Representatives as the expression of this convention; and be it further

Resolved, That a copy thereof be sent to President Roosevelt as the expression of this convention, with the request he submit to Congress a special message urging an enactment of such a law; and be it further

Resolved, That said bill be printed by the secretary of this association and furnished the members thereof, with the request that they write their respective Senators and Members of Congress, urging the enactment thereof.

A true copy.

T. W. TOMLINSON, *Secretary*.

I represent the American National Livestock Association as its first vice-president, and I wish to send this resolution to each member of the committee, but in case they may not have looked them over very carefully I will file this resolution.

There are one or two points that I would like to refer to, and one is the shortage of cars, more particularly. I will give you a specific case, so that I will be able to give the details, and when I tell my own case it will refer to hundreds of cases besides my own.

I ordered cars this year on the 15th of September for the purpose of shipping cattle to Kansas City and St. Louis, Mo., on the 5th or the 6th of October. I had the cattle gathered with the intention of shipping them to those points, and when they were ready for shipment I was told by the railroads that they could not get the cars, and that I might not look for cars before at least the middle of December. So I either had to hold my cattle or turn them loose again, and I thought it was best to turn them loose, which I did. In the meantime I went to several connecting roads to see if I could

get cars from them. I went to the Rock Island and begged them on personal and business grounds to help me out. They refused positively to give me the cars. So did the Santa Fe. They all did this on the ground that they had more to do on their own systems than they had cars for, and that they could not supply cars to connecting roads, my business originating on the Fort Worth and Denver City, because it was stated that they could never get their cars back again. They cited a case where they had 200 new cars brought west over the Rock Island. The Rock Island asked them as a favor to allow them to load their cars east so that the cars would not be taken west empty. They stated to me positively that they never saw one of those cars, that the cars never reached them.

Now, gentlemen, if Mr. Cowan's contention was carried out, the Rock Island could not keep those cars, but would have to send them back. That is the point we are after, that these roads when they get possession of those cars shall not keep them indefinitely for their own private uses. If we had such a law passed this thing could not happen, the existing conditions could not continue, and the shippers would have some hope of getting their cattle shipped to market some time.

Now, gentlemen, I had to turn back one-half of the cattle I had gathered, and never got them shipped at all. This year I turned loose over one-half, and had to turn them loose two months and keep them in an inferior pasture. I then had to regather them at a loss to me of from 75 to 100 pounds in weight. I can assure you, gentlemen, that if the railroads would give me \$30,000 in money that that sum would not make up to me or to my company the amount of money that I lost on account of their failure to supply cars within a reasonable time.

Now, I am not going to take up your time, but I could give you hundreds of cases where those facts apply to other people. I could go at length into the poor service, if I had the time, but I will refer to the Agriculture Department where, at our instigation, they have investigated 800 cases of poor service, and in those investigations they have found that in all the cases they investigated the rate per mile made by those roads was under 10 miles per hour, and in some cases it was 2 miles per hour for a distance of from 200 to 250 miles.

Now, gentlemen, you have no idea what loss this service entails on cattlemen, but I will refer you to the Agricultural Department, and to Mr. McCabe, the solicitor, who made the investigations.

Mr. RICHARDSON. You are complaining chiefly because the cars that were supplied to one line or to one road were shipped off on another, and they were not returned to the road, and the other road is using them?

Mr. MACKENZIE. That is what they claim.

Mr. RICHARDSON. Is it not to the interest of that road that owns those cars to get them back?

Mr. MACKENZIE. They can not get them back.

Mr. KENNEDY. That is the excuse the road makes to you as to why they will not give you cars?

Mr. MACKENZIE. That is the excuse they make.

Mr. RICHARDSON. Then the point is that the other road is using the cars in a different way from what it was originally intended to

use them for their own purposes, and denying the road that owns them the privilege of using them.

Mr. MACKENZIE. Yes. I can tell you another fact——

Mr. RICHARDSON. I do not see why the railroad does not regulate that itself. It is certainly to its interest to do it.

Mr. MACKENZIE. At the very time I was appealing to these men the same system was using hundreds of cars hauling coal, and not using them in the stock business at all.

**STATEMENT OF MR. I. T. PRYOR, PRESIDENT OF THE CATTLE
RAISERS' ASSOCIATION OF TEXAS.**

Mr. PRYOR. I am president of the Cattle Raisers' Association of Texas. I was in hopes that we would have plenty of time to let you gentlemen understand the drastic conditions we are in as to the car service and the securing of cars.

Now, if that gentleman over there [pointing] wanted to buy a drove of cattle from me, I would not dare sign a contract with him agreeing to deliver that drove of cattle on the cars at any certain time, and he would not buy them of me because he would want them at a certain time. Conditions have come to that. If I go to a Chicago banker and borrow money on my cattle that are in Kansas in pasture, and ready to go to market, and set the time as the 1st day of September to ship those cattle and to pay that note, it will have to go to protest, for I can not get cars until October, November, or December. The cattle will have lost their fat, and nobody has gotten the benefit of it. This thing is growing worse day after day, week after week, and year after year, and it simply is because they do not exchange cars with each other. They are appropriating stock cars for coal. We can not ship our cattle in anything but the stock car, and they are discriminating against our class of freight in favor of the other classes. You can haul wood or coal in any kind of a car, but you can only ship cattle in cattle cars.

The CHAIRMAN. Do these difficulties exist now or were these the difficulties of last year?

Mr. PRYOR. I have in my possession a large number of letters, the occurrences of 1907, where a man had a railroad running through his ranch, and had 10,000 cattle that he wanted to ship. These cattle were fed in April, May, and June, the best market for young cattle during the year. Later the cattle will fall off and get thin. He got 3 cars in April, 3 cars in May, and 37 cars in June—then came July and August—and the market went off and he didn't get through shipping until December.

The CHAIRMAN. A gentleman was here before the committee the other day who stated that one-third of the freight cars in the United States was idle to-day.

Mr. PRYOR. They may be idle, but why that is I do not know. But I do know that the information I have is that there were 30,000 cattle, 3,000 cars, turned back on the Pecos Valley road alone in the Panhandle of Texas and in New Mexico that could not get transportation, and they had to take them back to the ranges and turn them loose.

The CHAIRMAN. Another gentleman made the statement that on 46 per cent of the mileage of the United States there were now over 3,000 cars standing upon side tracks.

Mr. PRYOR. That may be true; I don't know. That probably would be caused by plenty of cars but lack of service.

Mr. STEVENS. Right there, do you not think that that is caused by congestion at terminals, or lack of proper track facilities in places?

Mr. PRYOR. No, my idea is this: They load down the trains too heavy. They load the cars on the side track and then put them into large trains. From 1898 to 1900 an engine and a crew with 15 cars would go 16 to 18 miles an hour. They will hold these cars up on the side tracks waiting to load the engine to its full capacity.

Mr. STEVENS. Why do they do that?

Mr. PRYOR. Because the superintendents of all of these railroads in the West are jacked up by some man in New York, and the superintendent that carries the most trains over his road with the least motive power, the least number of engines and crews, is marked up.

Mr. STEVENS. That is to decrease the ton mileage cost?

Mr. PRYOR. Yes.

Mr. STEVENS. Do they not have to decrease the ton mileage cost in order to meet the freight reduction in rates?

Mr. PRYOR. They don't do it. It occurs to me that the tonnage system and the lack of exchange of cars is the cause of this trouble; that is my opinion.

I want to file these documents here, which is a condensed reply to the chairman, by a number of letters from shippers giving the conditions. There are also two letters in full from two shippers, which came in this morning, that I would like to file.

The CHAIRMAN. You may give them to the stenographer.

Mr. PRYOR. I thank you.

Following are the letters and statements referred to:

PALODURO, TEX., *February 8, 1906.*

DEAR SIR: I wish to give you an experience that I had in shipping 2,000 steers over the Chicago, Rock Island and Pacific Railway last summer, from Groom, Tex., to Arkalon, Kans.

On July 1 I ordered 70 cars through the agent at Groom to load there on July 25, for Arkalon, Kans. I was assured by the assistant general freight agent of the Chicago, Rock Island and Pacific Railway at Kansas City that if I would promise to have the cattle at Groom on July 25 there would be no delay about the cars. On July 20 I again notified the agent at Groom that we would have the cattle on hand ready to ship on the 25th, and he wrote me as follows: "Am advised that we will get the cars."

We were there with the cattle on the 25th, but there were no cars there and we could get no definite information as to when they were likely to be there. We had to rent a pasture to hold our cattle and it was twelve days before we got them shipped, and the pasturage cost us \$400, besides having our outfit of men and horses laying over when they ought to have been at home doing important work on the ranch.

On August 2 the agent at Groom notified us that we would get a train out on the 3d. We brought our cattle in and yarded them, and then were notified that we could not get the train that day. On August 4 we were notified that there would be 23 cars there ready to commence loading by noon. They finished loading these 23 cars at 6.45 p. m., and they stood on the track until 9.30 p. m., and arrived at Amarillo at 7.30 a. m., this being a distance of about 40 miles, which it took them about thirteen hours to make. They were held at Amarillo for two hours, leaving there at 9.30 a. m., and arrived at Dalhart at 5 p. m. They were held there two hours and thirty minutes, and then we were told that they must be unloaded. Dalhart is about 115 miles from Groom, where the cattle were loaded, and it took twenty-two hours to make the 115 miles. They were reloaded at 7 a. m. on the 6th and left at 9.30 a. m., arriving at Arkalon at 5 p. m. It took forty-six hours to move these cattle from Groom to Arkalon, a distance of 239

miles, and we had a \$40 feed bill to pay at Dalhart, which was quite unnecessary if the cattle had been handled properly by the railroad. We were notified that our second train would be ready to load at 10 a. m. on August 7. The train did not arrive at Groom until 12 noon. Then they discovered the engine was out of water and they had to run about 20 miles to water. They came back and discovered the engine was leaking and had to make another run for water. They started to load us at 7.30 p. m. and finished loading at 4 o'clock next morning, leaving Groom at 4.30 a. m. on the 8th and arriving at Arkalon at 2 a. m. on the 9th. This was twenty-six hours and thirty minutes as compared to the other train's time of forty-six hours.

This is only one instance of the bad treatment I received at the hands of the railroads in the past year. On October 18 I loaded a car of bulls at Southard, Tex., on the Fort Worth and Denver Railway for Kansas City. They advised me that they could get them through all right if I would bill them via Fort Worth, and then over the Missouri, Kansas and Texas from Fort Worth to Kansas City. They were billed through to Kansas City on this routing, but when they got to Fort Worth the Missouri, Kansas and Texas refused to furnish a car for them, and the Fort Worth and Denver Railway refused to let their car, which they were originally loaded in, go off their own road. The result was my bulls laid in Fort Worth for four days and were finally sold in Kansas City on the 28th, ten days from the time they were first loaded. In the good old days when we used to get service from the railroads they would have reached Kansas City in thirty-six hours. Some of my other experiences last fall are too sad to relate, driving cows to the railroad when they were worth \$3 per 100 pounds and holding them there for thirty days or more on short grass, waiting for cars, and finally getting them to market in such bad condition that they sold for \$2 per 100 pounds.

Hoping the present Congress will pass Senator Culberson's bill and Congressman Smith's bill, providing better service for shippers of live stock,

I remain, yours, truly.

RICHARD WALSH.

Col. I. T. PRYOR,

New Willard Hotel, Washington, D. C.

DENVER, February 11, 1908.

DEAR SIR: At the request of Mr. Ike Pryor, president of the Cattle Raisers' Association of Texas, I beg to forward, in your care, this letter to be presented to such body or committee as properly has the matter in consideration.

As president of the Continental Land and Cattle Company, we most respectfully represent that all railroad service has been exceedingly bad for the past three years and is growing daily worse.

It has been impossible to get cars at all promptly or certainly on any of the lines with which we have done business in the past three years. We speak particularly of the branch of the Rock Island that runs from Amarillo, Tex., to Little Rock, Ark. We believe this is called the Gulf road. At any rate, our shipping point on this road is Shamrock, in Wheeler County, Tex. In connection with this road we wish to state that the shipping pens are on our Rocking Chair ranch in Texas; that the latter part of 1907 this road positively refused to furnish cars to carry cattle, stating to our foreman, Mr. Green, that they did not care for the business.

Now, on the 25th of September, 1907, our foreman, Mr. R. D. Green, was waiting at Shamrock with 20 cars of cattle, ready to ship to market. The Rock Island road, without excuse, although notified in ample time, refused to furnish cars for these cattle and we were consequently compelled, after holding them as long as we could, to drive them from this road over 70 miles to the Fort Worth and Denver road at Estelline.

Our efforts to get these cattle to market is best told in the statements of R. D. Green, our foreman. He wrote me on September 29, 1907, as follows:

"I am just in from Shamrock. Will say that I could not get any cars, nor the promise of any, so I have started everything to this ranch, Estelline, Tex. Will have some 35 cars to ship next Saturday from Estelline, if I can get the cars. If I can not get cars, I will be compelled to turn them loose on the ranch. Please work on the Santa Fe, if you can, and try to get them to send us cars. I ordered 20 cars over the Santa Fe at least two weeks ago, to load the 5th of October. I also ordered some more to-day. I also ordered 25 cars over the Missouri, Kansas and Texas on October 5, 1907, but there are no cars yet. Now, I will state in this connection, that the Fort Worth and Denver always say that they have no cars, but that if we will get Santa Fe or Missouri, Kansas and Texas cars they will load the cattle and ship them over this route."

On October 6, 1907, almost a week later, our foreman wrote:

"I have your letter at hand. I have been digging after cars, but have not got a car yet. I will be compelled to put the cattle, some of them at least, back on the ranch."

On October 11 he writes:

"Am to get 7 cars in the morning, so I will get off a few cattle."

Now the rest of these cattle we were unable to get to market, so, after holding them for months, we were compelled to turn them loose again on the range.

In addition to this we wish to state that in the fall, I think it was in October, we sold 2 cars of calves to a Mr. Cobb, a banker at Odessa, Mo. I advised my foreman of the sale and he ordered cars over the Rock Island at Shamrock in ample time to secure them, telling them the date he would arrange to ship. It was Mr. Cobb's desire that these calves be located at Shamrock, as it was a shorter run to his point in Missouri.

I will state in this connection that the calves were weaned from their mothers and driven all the way to Shamrock, a distance of more than 35 miles, and after being held there for days we were compelled to drive them back, turn them loose on the ranch, and feed them there, and we lost the sale to Mr. Cobb, greatly to his disappointment and our own. Mr. Cobb had gone to the trouble and expense of sending his own foreman down there, and he selected the calves at the ranch and had gone with them to Shamrock and waited there with my foreman until he was obliged to go home. He then instructed my foreman to wait awhile longer and to keep the calves from shrinking the best he could, hoping that the shipment would be made later. My foreman waited a few days longer and then wired me to know what he should do, as he saw no prospect of cars. I wired him to come back to the ranch and turn the cattle loose.

Now, I speak of these cases coming within my own knowledge, and I wish to say that the Rock Island road in particular—that is, the branch that runs from Amarillo eastward to Little Rock, Ark.—absolutely refuses to furnish cars, stating, as I understand, that they do not care for the business.

I have no personal knowledge of the service from Montana and Dakota—that is, I have to relate no incidents coming within my own knowledge. All I know is that our cattle that went over these routes came in in bad condition, and I am informed by the shippers they have often waited an unreasonable time at the railroad for cars.

I submit this statement for what it may be worth.

Very truly, yours,

CONTINENTAL LAND AND CATTLE COMPANY,
By Wm. E. HUGHES, *President.*

Hon. S. H. COWAN,
*Attorney Texas Cattle Raisers' Association,
New Willard Hotel, Washington, D. C.*

Testimony by I. T. Pryor, president of the Cattle Raisers' Association of Texas, before the House Committee on Interstate and Foreign Commerce in support of the Culberson-Smith car and transportation service bill.

In representation of the Cattle Raisers' Association of Texas, which represents the cattle raisers of the Southwestern States and not merely of Texas, I wish to urge upon this committee the pressing necessity of enacting a law which will enable us to secure the best service the railroads can give us in supplying cars to ship cattle, and when they accept them get them to market and other destinations speedily.

It may not be necessary, but I wish to impress you with the fact that our urgent demand in this particular, which is perhaps somewhat more urgent than we would make were we shippers of dead freight, whereas from the fact that when cattle are ready to market, or when we want to ship them to a place where feeders buy them to fatten, delay in getting cars and not getting through to destination entails a very serious loss in money value, besides inhuman treatment to the cattle which our business can not afford.

It is not merely the interest of the men in the Southwestern States who raise cattle which is affected by failure to get cars and poor service, but the interest of the men in the corn belt States who buy our cattle to mature and fatten is just as much affected as the men who raise them.

You may not know it, but it is a fact that a large part of the cattle for the corn belt States is bred in the South and Southwest, where they can better raise but can not so well fatten and mature them.

We ship cattle to the various markets where feeders buy them to fatten, and to various points where public sales are held. The failure to furnish cars and to get them through injures the cattle, injures their salable value, and causes loss to the buyer as well as the seller.

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Many buyers purchase in the West and Southwest for shipment to their places of feeding and maturing, and others purchase to ship to the northern ranges for grazing. Their interests are interwoven, and I may say the prosperity of the West is hinged to a large measure on the prosperity of the live-stock business.

The demand is universal for a law which tells us what the railroad's duty is; which helps them to perform that duty and enables us to compel it. That is why we are here.

In my possession, as president of the Cattle Raisers' Association of Texas, I have resolutions which have been passed at every convention for several years, by which I have been directed by that association to use our utmost endeavors to secure a law of the kind mentioned.

Preparatory to presenting to you the facts, I bring with me letters from many of the most reliable men of the country which show the injurious practices of the railroads in the failure to furnish cars and to promptly transport cattle, which I wish you had time to read, but to save your time and patience I submit a synopsis of a few of them, pointing out the character of the bad service and the necessity for a remedy in cases of interstate shipments, which serve to illustrate conditions which nobody denies, and which if you desired could be proven by thousands of witnesses.

I have a communication from Robert Driscoll, of south Texas. He shipped in 1907 about 300 cars of cattle, commencing in January. His last shipment was made on the 18th of December.

He endeavored to ship as many of these cattle as possible during February, March, April, and May.

Had cars usually ordered thirty to sixty days before dates of shipment. In April, May, and June he had standing orders for as much as 20 cars any time the railroad could furnish them. His cattle were fat and the market good.

In April he got 3 cars, in May 3 cars, and in June 37 cars, and this is a fair sample of the service he has received as regards delivery of cars.

He further states he loaded his cattle thirty-six hours run from the Fort Worth market, less than 500 miles distant, and they should have made the shipment without unloading; instead of this they never failed to unload from one to three times in transit to market.

From W. H. and R. J. Jennings, Laredo, Tex., I have the statement they ordered 35 cars in January, 1907, to load April 1. The shipment was ready at the date mentioned, loading one train at the time ordered; the rest he held seventeen days before he got cars.

By that time, holding them with no grass and little water, the cattle had shrunk in condition to such an extent that they were not suitable for market and had to be shipped to grass.

Mr. A. B. Robertson, of Colorado, Tex., states on April 8, 1907, he put in an application for 20 stock cars at Plainview, Tex., for shipment to Kansas City on October 20. His cattle were driven to Plainview, reached there in time, and were ten days waiting for the cars.

Mr. J. J. Welder, of Victoria, Tex., states that during the year 1907 he made many applications for cars, and the answers he received from the agent were "will furnish them if we can." The result was that he was compelled to wait the pleasure of the railroads, and in all cases Mr. Welder says they were never on time.

Mr. J. D. Jackson, of Alpine, Tex., says on April 16 he ordered 60 cars to be loaded on April 25 and did not receive any information about these cars until May 25, when they delivered 40, and on May 29 received the balance of this order.

This delay cost 100 head of good Hereford cows. They were held on poor grass and little water.

His damages were estimated at \$2,000 alone. The buyer who shipped the cattle lost heavily in transit because of the emaciated condition of the cattle delivered, having been held so long with no feed and little water.

Mr. A. H. Tandy, of Hargrave, Tex., ordered 30 cars about the 25th of April, 1907, over the Pecos Valley Railroad for May 10. On May 10 he had the cattle ready and held them under herd waiting for cars until June 9. By that time they had lost in flesh, quite a few had died, and there were only 14 cars in condition to stand shipment.

They were shipped from Riverton to Canadian, 340 miles. A portion of them reached their destination on the 12th and some on the 14th. His damages were several thousand dollars.

Mr. L. T. Wilson, of Kansas City, Mo., shipped 400 cars of cattle during the year 1907. Three thousand of these cattle were shipped from Quero, Tex., to Indian Territory or Oklahoma points. He states the railroads failed to furnish cars for shipment after being inconvenienced and waiting from fifteen to forty-five days after the date of the order for cars was given.

He further states the distance from Mannford to St. Louis is 449 miles, one of the points from which he shipped from Indian Territory to St. Louis. This distance the railroads should make within thirty-six hours.

He states out of the whole summer shipments there were but three trains reached their destination on time. His damages on the 10,000 cattle shipped were very great.

J. D. Jennings & Co., of Kenney County, claim to have been damaged \$6,663 in their shipments from Spofford, Tex., on about 100 cars to the Fort Worth market and the Territory, damage arising from railroad failing to furnish cars and to the service after cars were furnished.

W. E. Halsell, of Vinita, Okla., states he ordered 95 cars to be shipped from Bovina to Kansas City, driving 1,250 head of cattle to the shipping pens, holding them two weeks, and then took them back to his ranch and turned them loose. These cars were ordered in October.

On November 12 they gave him 18 cars, which were all he was able to get during the shipping season out of the 95 cars ordered. He estimated his damages as \$12,500.

J. W. Gibson, of Beggs, Okla., on February 15, 1907, placed an order with the Pecos Valley Branch of the Santa Fe system for 160 stock cars to be loaded on April 14, 15, and 16, respectively. He arrived at the shipping pens on April 13. Was compelled to hold his cattle on bad water and practically no feed until April 28 before securing cars to ship.

He states the railroad agent told him when he placed the order there were practically no cars booked for cattle from that locality.

This is only one instance of a large number he cites in his communication.

Fowler & Son, of Maple Hill, Kans., state in their communication that their cattle the first part of October were all ready to go to market and sell as prime exporters.

They began shipping on the 17th of October and found it impossible to ship out as they had intended on account of not being able to get cars.

Instead of shipping the cattle in October as they wished to do they did not succeed in shipping them until the middle of November, causing a loss of \$10 per head, as they were 1,500-pound steers.

On the 15th of October they ordered cars to ship from Channing, Tex., to Maple Hill, Kans. The cattle were gathered ready to ship by the 20th of October.

Cattle were held for over two weeks. Could get no assurance from the railroads as to when they would ship them out. Finally, after holding through a bad snowstorm, they furnished cars on November 10.

Cattle had to be gathered a second time at a loss of at least 100 pounds per head. They consider their loss on this particular shipment at least \$5 per head.

In January, 1907, I ordered 100 cars to load at Victoria, Tex., for Okmulgee, Ind. T., on April 10, 11, and 12. These cattle were ready for loading on the 10th. No cars in sight, and it was May 5 before we finished loading these cattle.

In February I ordered 75 cars, destination Okmulgee, Ind. T., to be loaded at Encinal on April 15. Cattle were ready at the specified time, and held until April 25. On that date I made a written application for cars in full compliance with the articles 4497, 4498, 4499, and 4500 of the Revised Statutes of the State of Texas, paid the agent 25 per cent of the published tariff rate from Encinal to Fort Worth, being compelled to change my shipment from interstate to State shipment to avail myself of the above-mentioned statute. This action brought the cars within the prescribed time.

FORT WORTH, TEX., *January 23, 1908.*

DEAR SIR: You are doubtless aware of the fact that the Cattle Raisers' Association of Texas has caused to be introduced in both Houses of Congress—in the Senate by Senator Culberson and in the House by Congressman Smith—a bill commonly called "Transportation and car service bill."

I expect to go to Washington during the first part of February to appear before the Committee on Interstate and Foreign Commerce to assist in securing the passage of this bill, and I urgently ask your cooperation in this matter by writing me a letter giving specific information as regards any shipments you made or endeavored to make during 1907.

State in this letter the exact date you ordered cars—the number of cars—and give if you can the reply you received from the railroad agent or superintendent from whom you ordered the cars. Also give the exact date the cars were furnished, if furnished at all—when loaded—and how much time was consumed between loading and reaching the market. Give approximately the distance from your loading place to market.

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If you failed to secure cars at all, state how long you held your cattle before turning them loose; also give briefly the inconvenience, financially or otherwise, you were put to by the failure of the railroads to furnish said cars, and the approximate damages you sustained by reason of such failure. If convenient, make oath to the statement you send. If not, send it anyway.

Please do not fail to write your Representatives in Congress immediately upon receipt of this letter an urgent request to support this all-important measure. It will take united effort on our part to secure its passage during the present session of Congress.

Yours, very truly,

(Signed) IKE T. PRYOR,
President.

P. S.—If you will not act on the suggestions contained in the above letter please hand same to someone who will.

**STATEMENT OF MR. A. E. de RICQLES, GENERAL MANAGER
AMERICAN LIVE STOCK AND LOAN COMPANY, DENVER, COLO.**

MR. DE RICQLES. I want to answer a question that one of the gentlemen of the committee put. The live-stock rates have all been increased from 15 to 25 per cent—from 10 to 18 per cent in some sections.

MR. WANGER. In what period?

MR. DE RICQLES. In the last five or six years. They have increased them in various ways—by changing rates from \$1 per car to a cent per 100 and by adding a terminal charge.

MR. HUBBARD. When was the last increase?

MR. DE RICQLES. Some of my receipts have been increased in the last thirty days. We do not mind that so very much, however, if they will give us the service.

Now I want to take the map and explain an answer to a question put by a member of the committee. Down in this country, Arizona, New Mexico, and Texas, is the country where a great many cattle are raised. The country can be divided into a breeding country and a grazing country. Here in the northwest [indicating] is where some cattle are fed and matured. Now, in the spring of the year there is a very large amount of young cattle from the Southwest in the grazing country and in the feeding country. A branch of the Santa Fe line runs into New Mexico and back into Texas, called the Pecos Valley road. That road of itself has very few cars to take care of the cattle originating on the road, and naturally they could not exchange with the northern lines, so the Burlington road commences months before the movement of stock to send cars south to the Pecos Valley road through Denver. They go down to Amarillo for delivery to the Pecos Valley for loading back over the same route to the northwest. Now, what does the Pecos Valley road do? I want to show you. The Pecos Valley road has done this in cases to my knowledge: They have taken the cars that come from the Burlington road and sent down there through Denver and loaded them east by the way of Amarillo and their line to Kansas City. And there is where we want a law that will compel this railroad not to abuse the equipment provided for a certain line of business. This business suddenly ends about the 1st of June; that is, we can not take those cattle up later than the 1st of June because the grass is late and we can not turn them out.

Mr. HUBBARD. In other words, those cars are sent down there for the purpose of taking care of that business, but they are diverted from that purpose to some other purpose?

Mr. DE RICQLES. Yes; for a wrong business.

There is just one other point that I want to bring out, and I am going to ask the permission of the chairman of this committee to file a statement a little later on the subject, and that is, why the live stock men take such an active part in this question of railroads. The live stock men are absolutely dependent upon the railroads for their very existence. There is no other business that is so intimately connected with the business of transportation as the movement of live stock, because the farmer himself, Mr. Chairman, is not the producer of what he feeds. In 60 or 75 per cent of the cases the live cattle which enter into our food supply are raised in some other section, perhaps as yearlings, and then they are removed perhaps a thousand miles to where they become two or three year old steers, and then they are removed perhaps another thousand miles to where they are fed, and then still another thousand miles to where they are exported; and therefore we are intimately connected with the railroads all the time. And furthermore, there is a very great quantity of feed and grain and beet-sugar pulp and beet tops and grass on the range that can in no way be marketed except through a finished animal—by a sheep, or by cattle, or something else of that kind; and that is why we are coming to you and asking you to help us. It is not merely the cattle industry that is talking to you, but also the men who raise grain and have farms and raise sugar beets and have cattle on the range. The railroad men between themselves may solve all these questions. It is not for us to tell them how to exchange their cars, for example, at St. Paul. The cars go to Milwaukee and the Northwest, and they say, "How many cars are you going to take out on our line to Chicago in the fall?" They take those cars out and never bring them back. They do not carry cattle in them, but instead they may load them with lumber and send them out to the Pacific coast. They load them up with coal and coke. They abuse the privilege, and when they get them from another road they do as the Pecos Railroad, that I referred to a moment ago, does down in the South, and send them away off entirely from the purpose they were sent down for.

Mr. Chairman and gentlemen, I ask the privilege of filing a statement with you.

The CHAIRMAN. Very well; that may be done.

**STATEMENT OF MR. JOHN B. DAISH, OF WASHINGTON, D. C.,
REPRESENTING THE NATIONAL HAY ASSOCIATION AND GRAIN
DEALERS' NATIONAL ASSOCIATION.**

Mr. DAISH. Mr. Chairman and gentlemen, I represent on this occasion the National Hay Association, an organization of producers, shippers, and dealers in hay, aggregating about 970 in number and scattered throughout many States and Territories. I also speak with authority for the Grain Dealers' National Association. You have heard of the trials and troubles and tribulations of the live-stock people. To the same extent, except at the terminal markets, the hay and grain people have the same trials, troubles, and tribulations.

The two associations urge upon this committee the favorable recommendation of this bill. It has received careful consideration by the two associations, and we urge its passage, believing that the present troubles can be easily rectified by a compliance with the proposed measure.

It has occurred to me that perhaps at sometime during the discussion of the bill some one will question the authority of Congress to pass such a law as is now proposed, and with that idea in mind I have prepared a brief on this subject. I will not trouble you or tire you to read it, but I will ask you for leave to file it now.

Mr. COWAN. Mr. Chairman and gentlemen, on behalf of our committee I wish to say that we are very much obliged to you. You have been extremely courteous to us, and I want to say that we are very appreciative of your courtesy and attention.

The CHAIRMAN. We are gratified at having had the pleasure of hearing you.

Mr. STEVENS. Yes; their discussion has been full of valuable information.

Mr. RICHARDSON. I would like to suggest with reference to the hearings that we would like to have enough copies printed so that these gentlemen may get some of them themselves.

The CHAIRMAN. That will be done.

Following is the memorandum referred to:

Memorandum on the authority of Congress to enact a bill entitled "A bill to require railroad companies engaged in interstate commerce to promptly furnish cars and other transportation facilities, and to empower the Interstate Commerce Commission to make rules and regulations with respect thereto, and to further regulate commerce among the several States (S. 3644, 1st sess., 60th Cong.), submitted by John B. Daish on behalf of the National Hay Association.

Concerning the right of the Congress to enact a reciprocal demurrage law, so called, I beg to submit, car-lot freight only being considered, the following observations from a legal point of view:

I. By the term reciprocal demurrage I understand that by law or by means of rules promulgated through an administrative body which has been duly authorized by law so to do, it shall be provided that the carrier which fails to furnish equipment to a shipper within a specified time after request for same, or shall fail to promptly move from point of origin the equipment when loaded, or shall fail to move the car forward at a specified rate per day, or shall fail to place within a specified time loaded cars upon proper unloading tracks, or shall fail to give prompt notice to the consignee of the arrival of the goods, shall be amerced by a certain sum payable to the shipper, consignee, or other party, as interest may appear, provided that each of the several acts are not circumscribed by unavoidable causes, the several specific lengths of time and the rate of speed being denominated "reasonable" for all classes of traffic and under all circumstances in which the carrier may find itself, except the unavoidable accidents, or the like, above referred to.

II. (1) The basis upon which reciprocal demurrage laws have been enacted in the several States has been the "police powers" of the States. This term has been defined by Cooley (Constitutional Limitations, 7th ed., p. 829) as follows: "The police power of a State, in a comprehensive sense, embraces its whole system of internal regulation, by which the State seeks not only to preserve the public order and prevent offenses against the State, but also to establish for the intercourse of citizens with citizens those rules of good manners and good neighborhood which are calculated to prevent the conflict of rights and to insure to each the uninterrupted enjoyment of his own so far as is reasonably consistent with a like enjoyment of rights by others.

"This police power of the State extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the State." (Redfield, Ch. J., in *Thorpe v. R. R.*, 27 Vt., 140, 149.)

The police power in our American constitutional system has been left wholly with the individual States, and the Congress has no power, expressly or by implication, to take away any or all of it. (U. S. v. *De Witt*, 9 Wall., 41.)

(2) The police power of the United States extends territorially only to those places where the legislative authority of the Congress applies, such as the District of Columbia. "Within State limits it would have no constitutional operation. This has been so frequently declared by this court, results so obviously from the terms of the Constitution, has been explained and supported on former occasions, that we think it unnecessary to enter again upon a discussion." (Chase, Ch. J., in *De Witt v. U. S.*, 9 Wall., citing License cases, 5 How., 504; Passenger cases, 7 How., 283, and the cases cited.)

III. If the Congress can constitutionally provide for reciprocal demurrage it can only do so under one of the enumerated powers of the Constitution: "To regulate commerce with foreign nations and among the several States, and with the Indian tribes."

Commerce, in its constitutional sense, is more than traffic. It includes commercial intercourse in all its branches, and to regulate this means to prescribe the rules for carrying on such intercourse. (*Gibbons v. Ogden*, 9 Wheat., 1.)

The power committed to the Congress by the Constitution does not extend to commerce wholly within the State. (*Gibbons v. Ogden*, supra.)

The limitations upon the power of the Congress to regulate or prescribe rules by which commerce is to be governed are only those which are to be found in that instrument. (*Gibson v. Ogden*, supra.) There are no limitations to be found in the Constitution of the proposed power except those powers reserved to the States, which include the police powers referred to above.

IV. As the individual States can not make rules or regulations which are a burden upon interstate commerce, so the Congress can not make rules and regulations which affect the internal powers of the States.

That a so-called reciprocal demurrage law enacted by a State can not apply to interstate commerce is well settled by the recent decision of the Supreme Court in the case of *Mayes v. R. R.* (200 U. S., 321). In that case a shipper sued to recover a specific penalty per day because cars had been withheld from him, the shipment being an interstate one. The decision of the courts below was reversed by the Supreme Court of the United States upon the ground that such a regulation was an interference with interstate commerce, and, apparently, on the further ground, that the statute did not provide for unusual circumstances which might arise in connection with the carrier's business. This decision, it seems to me, was based by the Supreme Court upon this twofold ground.

The complement of the case is clear. The Federal Government can not pass a regulation which will infringe the police powers of the individual States. Numerous decisions are to the same effect.

V. (1) An important question to be determined in addition to what I have heretofore said is, When does a shipment become interstate commerce? A review of all the decisions necessarily leads to the conclusion that whenever property has begun to move as an article of commerce, from a point in one State to a point in another State, then it becomes the subject of interstate commerce and is under the power of the Congress to regulate it. (*Gilman v. Philadelphia*, 3 Wall., 724; *The Daniel Ball*, 10 Wall., 557; *Coe v. Errol*, 116 U. S., 517; *R. R. v. Penna.*, 136 U. S., 114; *R. R. v. Penna.*, 145 U. S., 192; *U. S. v. Knight*, 156 U. S., 13.)

The movement does not begin until the articles have been shipped or started in their transportation (*Coe v. Errol*, supra); the preparation of the article for transportation is not sufficient (*U. S. v. Boyer*, 85 Fed., 425); nor the intent to transport (*Coe v. Errol*, supra); it must be actually delivered to the carrier for transportation. (*U. S. v. Boyer*, supra.)

(2) Another important question to be determined is, When the goods cease to be the subject of interstate commerce? The law upon this subject is that when the goods have been so acted upon that they have been incorporated in and mixed with other property of the State they cease to be subject to the regulation of the Congress. (*Gibbons v. Ogden*, supra; *Brown v. Md.*, 12 Wheat., 419; *Welton v. Mo.*, 91 U. S., 275; *Howe Mach. Co. v. Gage*, 100 U. S., 676; *Tierman v. Rinker*, 102 U. S., 123; *Brown v. Houston*, 114 U. S., 622; *Robbins v. Shelby County Taxing Dist.*, 120 U. S., 489; *Emert v. Mo.*, 156 U. S., 296.) Some decisions hold that the shipment is incorporated into the property of the State when it has been delivered to the consignee. (*Bowman v. R. R.*, 125 U. S., 456; *Rhodes v. Iowa*, 170 U. S., 412; *Leisy v. Hardin*, 135 U. S., 100; *Vance v. Vandercook*, 170 U. S., 438.) Some decisions go so far as to hold that it is required that some of the goods shall have been sold after they have arrived within the State of their destination. It is doubted, however, that sale is a requirement, but it is clear that a sale of a part or all of the goods in the State where they are destined and delivered destroys their character as interstate commerce.

In short, under the most favorable interpretation it appears from the cases that goods do not become subjects of interstate commerce prior to the time they are loaded upon vehicles for the purpose of transporting them to another State, if the time is not post-

tion, shall contravene the Constitution of the United States, nor infringe any right granted or secured by that instrument. A local enactment or regulation, even if based on the acknowledged police powers of a State, must always yield in case of conflict with the exercise by the General Government of any power it possesses under the Constitution, or with any right which that instrument gives or secures." (Gibbons v. Ogden, 9 Wheat. 1, 210, 6 L. ed., 23, 73; Sinnot v. Davenport, 22 How., 227, 243, 16 L. ed., 243, 247; Missouri, K. & T. R. Co. v. Haber, 169 U. S., 613, 626.)

I therefore conclude:

(a) Congress has no constitutional right to provide for a reciprocal demurrage law in so far as it relates to the furnishing of transportation facilities or the movement thereof in intrastate traffic, such power being exclusively in the several States.

(b) That the Congress has a right to provide for a reciprocal demurrage law in so far as it shall relate to the withholding of cars and facilities and instrumentalities of carriage, upon the ground that it can regulate (prescribe rules by which they shall be governed) such facilities.

(c) That the Congress has a right to provide for reciprocal demurrage in so far as it shall relate to the movement of cars and other facilities and instrumentalities of carriage in interstate commerce, being a proper regulation of interstate commerce, upon either or both of two grounds—the power of the Congress to regulate the goods after they begin their transportation or its power to regulate the vehicles containing them.

(d) That the Congress has a right to provide for reciprocal demurrage in so far as it shall relate to the prompt placing of cars, notification of arrival by the carrier, and the discharge of the cars upon either or both of the grounds just mentioned.

(e) That such a law must, however, in my judgment, except expressly or by implication from its operation unusual and unprecedented demands, unavoidable accidents, and acts of God.

(f) That Congress only has the right to prescribe for the interchange of cars in interstate commerce, that power being denied to the States.

(g) Having such power, the Congress can pass such legislation as will effect the purposes sought to be accomplished and provide for the punishment, by fine or otherwise, of those who fail to comply with the requirements.

(h) It seems that Congress, having provided that such transportation facilities shall be furnished, that cars shall be moved, and similar provisions—all to be within a reasonable time, or at a reasonable rate,—it may leave to an administrative body to make rules and regulations as to the details of what shall in each instance be a reasonable time, reasonable rate of movement, etc. In any event, such has been the practice. Congress makes the general rule and permits other bodies (its creatures) to provide for the application of them as to special localities or cases.

JOHN B. DAISH.

WASHINGTON, D. C., February 14, 1908.

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

ON H. R. 21453

PROVIDING FOR THE APPOINTMENT
OF NATIONAL WATERWAYS
COMMISSION



WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

NATIONAL WATERWAYS COMMISSION.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Wednesday, May 13, 1908.

The committee met at 2.20 p. m., Hon. Frederick C. Stevens in the chair, being a subcommittee for the purpose of considering bill H. R. 21453, in relation to the establishment of a certain commission.

STATEMENT OF HON. THEODORE E. BURTON, A REPRESENTATIVE FROM THE STATE OF OHIO.

Mr. BURTON. Mr. Chairman and gentlemen of the committee, the bill in which I am interested is 21453. I will say frankly at the beginning that I do not have any confidence that so elaborate a bill would go through both Houses at this session, and while I should like to have it taken up paragraph by paragraph and see what the general objection was in reference to the Commission, still I am not going to ask you to report the bill. I would ask you to consider it but for the fact that I do not think that it will get through the Senate, much less the House.

Last March the President appointed an Inland Waterways Commission composed of nine members—two Members of the House, including one ex-Member, two members of the Senate, a chief engineer, the head of the Bureau of Corporations, Mr. Herbert Knox Smith, Mr. Newell, Chief of the Reclamation Service, Mr. Gifford Pinchot, Chief of the Division of Forestry, and Mr. W J McGee, who has taken interest in these matters and who is now in charge of soil erosion investigations of the Bureau of Soils of the Agricultural Department.

We were appointed under a letter from the President, asking us to make certain investigations and report. We have made those investigations. We have been together a great deal. As for myself, I have given about as much time to that Commission as I have given to the work of any committee of the House, and possibly during the last year and two months I have given much more time than I have to the duties of the committees of the House. The legislative members were Mr. Bankhead, who was then an ex-Member, and Senator Newlands. Mr. Bankhead afterwards became a Senator, which made three members of the Senate and one Member of the House, but as the President designated me as chairman of the Commission, I feel that the House has its full standing in the Commission.

The object of the Commission was, in a few words, to make investigations in regard to the waterways of the country with a view to the promotion of navigation. Almost equal stress was laid on the question of coordination in the use of water. We were to consider the whole problem of flowing waters with reference to irrigation and to water supply, clarification of streams, and prevention of soil waste.

The principal thought of the President was that the whole question of the disposition of our water supply should be considered as one problem.

Most of the attention has been heretofore given the subject of navigation, but we have also taken up other branches of the subject. For instance, the President has asked us to report upon the prevention of floods and their relation to the variation of the water supply.

Now we are in the midst of this investigation. We have made a preliminary report, and it is the earnest desire of the President that we should continue our investigations for a short time longer.

On consultation with the President and the members of the Commission, it is fair to say that I think that such an extended bill as this should not be reported to continue the present Commission, though it would have a better legislative status.

Mr. STEVENS. Has there been any appropriation for any Member of Congress who is on this Commission?

Mr. BURTON. One was proposed in the Senate, but whether it was adopted I am not sure.

Mr. STEVENS. Is there not an item of several thousand dollars to defray the expenses of organization in future?

Mr. BURTON. No, sir; we have paid our own expenses, which have not been large in comparison with the time which we have spent upon the subject.

Mr. ESCH. I think there was a provision in one of the supply bills to pay Mr. Bankhead his expenses.

Mr. BURTON. That was another Commission known as the International Waterway Commission. That Commission is with reference to the boundaries between the United States and Canada. Mr. Ernst, who was formerly Chief Engineer of the Army, is president. That Commission was created by the river and harbor act of 1902. Its duties are to consider relations between Canada and the United States as regards the boundary waters between the two countries. Their investigations have been confined for the most part to the Great Lakes.

Mr. ESCH. This bill does not limit the number of Commissioners?

Mr. BURTON. No, sir. The present Commission consists of nine members. If this is adopted, the best way probably to do would be to continue that Commission, with authorization to the President to fill vacancies. It is possible there will be resignations from that Commission, because I myself may be compelled to withdraw, though I want to continue. The President is interested in that and spoke about it to me a short time ago in language of a rather fault-finding way because I had not secured passage of the matter.

Mr. STEVENS. Has it not been the opinion of some members of the Judiciary Committee that the work on the Appalachian Forest Reservation should be done by this Commission?

Mr. BURTON. I think not. I think it is the intention and the suggestion that the question of the relation of that matter and the relation of navigation should be left to the Committee on Rivers and Harbors.

Mr. HUBBARD. I think that the bill which was before you did not correlate with forestry matters nor with navigation matters. I think it was held that there ought to be, first, a demonstration or two before the adoption of forestry schemes and also in reference to the

navigation of streams, and as the bill before them did not do that, therefore they thought it was unconstitutional. It did appear reasonable. Another bill before the committee on Agriculture is for the appointment of a commission to select land.

Mr. STEVENS. That is the one that I have reference to. Have you prepared another draft of your bill?

Mr. BURTON. I have absolutely.

Mr. RICHARDSON. It is merely for the continuation of the Commission.

Mr. ESCH. With power given the President to fill vacancies.

Mr. BURTON. It is now implied, and I think it ought to be expressed.

Mr. HUBBARD. Would it not be better to continue that Commission with the present powers?

Mr. BURTON. Yes, sir.

Mr. HUBBARD. It would still be legislation to that extent.

Mr. BURTON. Yes, sir; it would be legislation.

Mr. STEVENS. That makes it more definite.

Mr. BURTON. Yes, sir; I think it would be unfortunate to recommend the continuance of the existing Commission, created by executive order, and give it legal status without reappointment of the members.

Mr. HUBBARD. Your suggestion is that in that bill that it be passed recognizing the appointment of the members at present and providing for the filling of vacancies by the President. Would it not be said that the President's orders are substantially the same as this bill?

Mr. BURTON. I do not think that the objections would lie along that line. Objection might be that it has done so much. What it has done has been done along the line of the President's order.

There is something here which I am satisfied would meet with opposition, and that is one reason why I thought it might be best to continue the present Commission. First, my idea would be more in opposition to the appointment of a new Commission, because the country is familiar with the present Commission, and, in the second place, this bill contains things that might create further opposition. I thought that the Commission might be empowered to frame recommendations for the development of our waterways and ask the authorization of Congress to carry them out.

I would just as soon that all of that would be left out. The Commission can do useful service by making recommendation to Congress. It could frame general rules in regard to improvement of inland waterways. That, it seems to me, is the work of such a Commission.

Mr. ESCH. If Congress was in favor of a suggestion as to regulations, it could be adopted.

Mr. BURTON. Yes, sir. I thought that was as much as we ought to ask of Congress at the start. That was why I wanted that proposition in.

Mr. RICHARDSON. You have defined the powers and now you want to get results by the appointment of a body of men to adopt more efficient and practical regulations for the enforcement of those powers.

Mr. BURTON. There are two reasons. In the first place, there is a general principle involved. A man who is competent for investigation is not always competent for execution. The elements of imagination and that of the policies to be adopted do not necessarily coincide with competency in carrying out the thing. There are already

established agencies for the improvement of waterways; namely, the engineer force. General Mackenzie said there were already established agencies to carry it out. I think it would be found that there would be considerable opposition in Congress to a provision that looked toward giving the power to the Commission to execute the plans. Speaking for myself, and I think I can speak for the rest of the Commission, I do not care for the right to initiate and prosecute the construction of locks and dams—I mean the canalization of a river.

Mr. STEVENS. It would be impossible to get a measure through either branch of Congress giving the Commission such authority.

Mr. BURTON. Let them win their spurs.

Mr. STEVENS. Are not several of these projects under investigation now, by other branches of the Government?

Mr. RICHARDSON. For instance, the purification of streams.

Mr. BURTON. It says "agencies, when such are available." This Commission has no intention, for instance, of going out and gauging streams. The object would be a generalization.

Mr. STEVENS. It would be all right for this Commission to coordinate with other branches of the Government and to make recommendations, but we do not want to duplicate the work of the Geological Survey, nor any other agency working along these lines.

Mr. RICHARDSON. I think that recommendation would be better coming through such a commission.

Mr. BURTON. Our thought would be that the details of such matters should be obtained through these bureaus, as circumstances might arise. There is great agitation in the country over the matter of impounding of the headwaters of streams. Although it was declared by leading engineers fifty years ago to be impracticable, I really feel that we do not want to throw that over our shoulders. It is worthy of investigation.

Mr. HUBBARD. Is this the result of your own investigation, or is it the result of Mr. Little's work?

Mr. BURTON. I am not ready to accept his ideas. While I do not want to have any elaborate survey, yet I would like to go over the subject again. The saving from flood devastation would be so enormous and the benefit to navigation would be so considerable that if it can be done it is worthy of consideration.

Mr. ESCH. It would be found that on the headwaters of some streams that a reservoir system would be not only practicable but absolutely beneficial.

Mr. BURTON. Yes, and the Ohio River is a case in point. It is a question of the volume of water that can be impounded. I visited Russia, and I gave considerable attention to that matter as it has been conducted in Russia in recent years as an aid to navigation. In some streams no amount of increased water supply would cure the defects of navigation. There might be a stage at which this Commission would want to send somebody out to make measurement, and the work should be done thoroughly. The bill provides that the President be "authorized to make such details and require such duties from these branches of the public service in connection with navigable and source waters as are not inconsistent with law." And then the proviso is inserted that this Commission shall not undertake duplication.

Mr. STEVENS. I think that is of very great importance.

Mr. RICHARDSON. You think it is desirable to cooperate with States, municipalities, communities, corporations, and individuals in such manner as to secure an equitable distribution of cost and benefits.

Mr. BURTON. The idea is just this—in the investigations on the subject they should take into account the clarification of streams, for instance, of the Ohio, which is the best illustration, and should consider reservoirs to impound water, and investigations should also take into account benefit to communities in that neighborhood. It would be fair in cases of investigation to attempt to save property from floods, for sometimes it is estimated that the damages run as high as \$10,000,000 per year. That estimate was made in regard to the Ohio River.

Mr. HUBBARD. And the estimate was not exaggerated. Many millions of dollars of damage have occurred.

Mr. BURTON. You can see that this commission would not be justified in simply brushing aside the contention of Mr. Little. It has been estimated that it would mean a return of 6 per cent on a capitalization of \$160,000,000. That is a thing that would contribute. My opinion is that there might be trouble in making the mechanical or other plans.

Mr. STEVENS. So far as the engineer's work goes, would there not be a liability in the matter of cooperation with the communities, etc., that there would be a good deal of friction?

Mr. BURTON. I do not think so.

Mr. STEVENS. This proposition arose in Wisconsin. There was friction between individual corporations and the United States in working out the details.

Mr. BURTON. Yes, sir; there were claims of corporations that were absolutely antagonistic to the United States. The claim of Fox River was a case in point where there was a very great injury, and a law was passed, or rather it slipped through, by which they might make unlimited claims for damages. In reference to the matter of a harbor, they get on very well.

Mr. STEVENS. You have had more to do with this perhaps than anybody else.

Mr. BURTON. I think it is absolutely essential to the prosecution of this great plan and to a full mastery of the great subject of the management of waters. It is a national problem.

Mr. STEVENS. The language on lines 17 and 18 has a direct connection with the language on line 14, where it reads "and that the Commission be empowered to frame and recommend plans for developing the waterways and utilizing the waters, and as authorized by Congress to carry out the same through established agencies," etc. That refers to the power of the Commission.

Mr. BURTON. There are two branches.

Mr. HUBBARD. It means the carrying out.

Mr. BURTON. There are really two branches of the subject. Suppose they go out and examine a river and recommend special improvements. They can carry out the recommendations. Let me read that [reading]:

That the Commission be empowered to frame and recommend plans for developing the waterways and utilizing the waters.

There are two things they can do and are authorized by Congress to carry out the things. They can do that through established agen-

cies or such as are available. That is done through the agencies of the Federal Government.

Mr. HUBBARD. The question is, Could you bring in State and municipalities?

Mr. BURTON. I do not so understand it.

Mr. HUBBARD. The Commission is to investigate. On line 14 it says that the Commission shall recommend plans.

Mr. BURTON. They can carry them out under two sets of circumstances.

Mr. HUBBARD. During the investigation and the framing of plans cooperation of States and municipalities is not invited, but only contemplated.

Mr. BURTON. It is not merely the framing of plans. It is not an essential part of the plans.

Mr. HUBBARD. Understanding it in that way, and considering the question of the utilization of water, and power being confided only to this national Commission, it suggests the question presented by the Rainy River bill as to the control and use of all waters for other purposes. It might be more acceptable if you could change that language and permit the cooperation of the States as to all of these questions, which would eliminate the question of controversy as between the States and the United States.

Mr. BURTON. Let me first make clear what that means. They are empowered to frame plans and are authorized by Congress to carry out the same. Those are the two sets of circumstances to which I referred, first, through established agencies, which are now in existence, and such as are available, and would be desirable in cooperation with States, municipalities, corporations, etc., in such manner as to secure an equitable distribution of costs and benefits. That is the way I have always read that language.

Mr. STEVENS. Under your construction, those lines from 16 to 20 have reference only to the work of the Commission after they have their plans and started the work?

Mr. BURTON. As authorized by Congress. That can be done by Congress, either by general regulation or by specific appropriation.

Mr. STEVENS. So that you have reference to the executive work of the Commission and not the legislative work of investigation?

Mr. BURTON. Yes, sir; the Commission can make a report as to what is a fair share for a community or a State. Probably there would be a difference of opinion as to the actual amount. Take the same illustration of the Ohio Valley. They went into the Ohio Valley and found that a reservoir could be constructed which would greatly benefit navigation and at the same time make navigation more uniform. They also found that another benefit would be locally conferred in the way of saving destruction from floods. I think it is unlikely that they would go so far as to recommend a specific sum of \$1,000,000 or \$2,000,000.

Mr. ESCH. In reference to the development of water power, would you say that the Commission should have power to regulate rates?

Mr. BURTON. No; they would recommend as to the general use of water power.

Mr. STEVENS. Might you not get into a situation that would make trouble? Ought we to go any further than to allow this Commission to investigate and find out what can be done and make recommenda-

tion along that line? We have had some experience already. We have had experience in building bridges across the Mississippi in co-operation with two agencies in the city of St. Paul and the street railway, which desired to contribute to that bridge. Congress provided that the bridge should be constructed. Could it be worked out along that line?

Mr. BURTON. We would have to do this: Where there was a proposed expense, and on examination we found—

Mr. STEVENS. It was not proper that the burden should be exclusively imposed on the United States Government.

Mr. BURTON. We would have to do so. Say that there was another agency that ought to bear a part of the expense.

Mr. STEVENS. You would have to provide for the improvement, and in addition you would have to provide that the other agencies shall pay their proper share.

Mr. BURTON. We fall short of that. I do not think that we would go so far as to recommend, at least not under this authorization, any specific method. You can see what we mean. They have 14 feet of water from the Lakes to the Gulf. They want a waterway from the Lakes to the ocean. I would not want to say that the Commission would be foreclosed from going into a complete waterway system, but I would not think that was proper. It might appear to be best on looking over the whole network of waterways.

Mr. STEVENS. How are you going to get the coordination of all of these other interests unless the Government can prepare a complete plan?

Mr. HUBBARD. I think Mr. Burton has reference to a general plan rather than its application to individual instances.

Mr. BURTON. That is true.

Mr. STEVENS. I agree with you; and don't you think we had better not go on right now?

Mr. BURTON. I do not think that their recommendation would have the parliamentary status so that they could be put in an appropriation bill.

Mr. STEVENS. How would it do to confine the work of this Commission to investigation, making no legislation for the work, but leaving that to Congress?

Mr. BURTON. I would like to have a pretty free hand, stepping short all the while of making recommendation which would enable the Senate or House to put one of these projects on an appropriation bill. We are going to have application from the East and from California. A telegram disclosed that in a moment of inadvertence on the part of the sender. We, not knowing the work that had been carried on by the engineers under acts of Congress providing for rivers and harbors, might cause a duplication. I might suggest some phraseology there.

Mr. STEVENS. Might it not be well to examine the whole question of the present organization of some of these bureaus and the question of duplication of work of some of these bureaus, and in a report consider how the various offices now doing this work could be best done by the Government as a whole?

Mr. BURTON. It would be a very valuable line of investigation.

Mr. STEVENS. I think so. If this Commission could examine these various lines of work, it would be tremendously advantageous.

Mr. BURTON. It would be excellent to have a report on duplications, if such there be, and a suggestion as to methods that might be devised to prevent them. I would be willing to undertake that. It would constitute a warning to the Commission.

Mr. ESCH. Do not you think that it would commend the bill to the House?

Mr. HUBBARD. This section does not contemplate the cooperation of the States until you begin to carry out the plan. Would it be well at that point to invite corporations also?

Mr. BURTON. That would be done anyway. We would ask the city about its water supply and all those things. The object of having this put in was to enable this Commission to make absolute estimates as to what share should be borne by a particular community. As a business proposition, we were afraid that cooperation with the other branches would not work unless there was an executive officer who was authorized to take up this problem. Second, if you leave it to the legislature, most of the legislatures do not meet every year.

A bill was introduced in the other end of the Capitol, which some people took seriously, providing for an appropriation of \$500,000,000 to be put in the hands of a waterways commission of ten members, they to select the different projects that were to be carried out. I could not approve any such course as that, because I think it is a wrong principle. I think these claims should be brought and presented to Congress and let Members urge their claims and they will usually win if they are right. The other method would be a sort of star-chamber proceeding. While such a commission might do something, the chances are that in two or three years the people would find such objection to it that it would be torn up by the roots. There is some phraseology and some ideas that possibly would put the Commission under proper control. We have a right to make those inquiries. We have a right to cooperate in the obtaining of information without a specific provision to that effect.

Mr. HUBBARD. Can you ask a State, a municipality, or a corporation to cooperate in a work when they have had no share in the investigation or in the making of the plans?

Mr. BURTON. No; that is true. We could not force them in either case.

Mr. HUBBARD. It is contemplated by that section.

Mr. BURTON. I do not think so. There is no authority to direct. It is only an invitation.

Mr. HUBBARD. Is it not better to invite their cooperation? When they cooperate, they have a chance to sit down and make an investigation through different channels.

Mr. BURTON. Yes, sir; in other words, it would give them a chance to go over the whole matter.

Mr. STEVENS. They could sit down and talk it over and make recommendation, and you could transmit those recommendations.

Mr. BURTON. Yes, sir.

Mr. HUBBARD. You are talking about bureaus and Mr. Stevens is talking about States and municipalities.

Mr. BURTON. The Commission could not compel them; it could only invite them. It would be well to have an affirmative statement in the bill if they are to be invited. I would say "invite." I would make it mandatory on the Commission to seek them and give them

information. I do not see any objection to it. This language, it seems to me, would leave that matter wholly to investigation and planning of the national Commission. Now, if the view did prevail that nothing would be done with these waters except so far as might relate to navigation, we would want to send the invitations to States or localities that wanted to share the expense.

Mr. HUBBARD. In matters affecting the States I think it would be well to invite the States.

Mr. BURTON. It might be made the duty of the Commission to invite the States as far as possible to give information through duly authorized State officials and minor political divisions.

Mr. STEVENS. By consultations with officials, State authorities, and minor political organizations. It could be something of that sort. It could be done without any expense. I think you ought to put in some such a provision.

Mr. BURTON. Yes, "but such information shall be furnished without expense," or, "provided such information shall be furnished without compensation by the United States." It could be the duty of said Commission to make investigation of the relation between the respective bureaus and agencies of the Federal Government having to do with investigation relating to water supply and its uses, with a view of preventing the duplication of any work of separate bureaus or agencies of the Government.

Mr. HUBBARD. Might it not go to the extent of saying water supply and other investigations?

Mr. STEVENS. It would not go beyond that.

Mr. BURTON. It would relate to water in its various uses.

Mr. STEVENS. What would be the objection to making it cover all bureaus making investigations with respect to anything with which this Commission has to do?

Mr. BURTON. Water supply, its uses or its effect.

Mr. STEVENS. If language similar to that were adopted then the matter from line 14 to line 20 would be unnecessary in this bill.

Mr. BURTON. I think not.

Mr. ESCH. In line 11, I do not understand the exact scope of the authority there where it says "transfer facilities and sites and the regulation and control thereof." What do you mean by that?

Mr. BURTON. The idea there is to make a State terminal or an unloading facility for transfer from river to railroad sites at such terminals. It is a matter of regulation and control.

Mr. ESCH. Would you not come into conflict with the Interstate Commerce Commission?

Mr. BURTON. The investigation would regulate that.

Mr. HUBBARD. Down to line 13 it all relates to investigation.

Mr. BURTON. Yes, sir.

Mr. STEVENS. There is no doubt that where a water line is in connection with a railroad line that that is now under the Interstate Commerce Commission. They have the right to investigate that. At the same time, this phraseology is in reference with terminals. The Interstate Commerce Commission can not do that, and this Commission is designed to do that very thing.

Mr. BURTON. It would be a generalization of the entire work.

Mr. STEVENS. Let the Interstate Commerce Commission devote itself to elaborating and working it out by a general system of levees. I think that is one of the best works that can be done.

Mr. BURTON. Along the Mississippi River the railroads own the site. That is a case where the Interstate Commerce Commission could not undertake to interfere. The railroads have got terminals between the river and the railroad line. In many cases the sites are all taken up by the existing corporations. They should have places for the transfer of freights. That matter was taken up last fall.

Mr. ESCH. Is it charged that the railroads monopolize the dock facilities?

Mr. BURTON. I am afraid that in some cases they do.

Mr. HUBBARD. The railroad goes on the idea that it can not own too much real estate. They endeavor to acquire real estate on general principles.

Mr. BURTON. That is especially the case in those territories where they endeavor to make transfers to water transportation.

Mr. STEVENS. Don't you think it would be wise to do what Mr. Esch has suggested, to limit the number of this Commission in some way?

Mr. ESCH. Say that it could not exceed nine, the same as the Interstate Commerce Commission.

Mr. BURTON. It might say not to exceed nine. The present legislation is subject to this. This looks toward the establishment of a permanent Commission.

Mr. HUBBARD. You say in the second line, that this proposed Commission shall continue its investigation.

Mr. BURTON. Some work has already been done.

Mr. HUBBARD. It naturally connects with the existing Commission.

Mr. STEVENS. Why is not that right? It is a public work. Its work ought to be taken advantage of.

Mr. HUBBARD. I am not objecting to it, but I think it might be more definite.

Mr. BURTON. With respect to facilities and sites for the transfer of traffic, I think that is clear.

Mr. STEVENS. Under the language on page 1, unless the personnel of the Commission would be those that are now in service, the Members of Congress on the Commission would be eligible under the language.

Mr. BURTON. I had hardly thought so. Yes, eligible; but if it should be made a permanent Commission, I do not think the legislative members would expect to go into it.

Mr. HUBBARD. I think the way this matter reads it is not limited to any branch of the public service. A commission of nine outsiders might coordinate the work.

Mr. BURTON. The Commission now has a member from the Bureau of Soils, a member from the Bureau of Forestry, and a member from the Reclamation Service.

Mr. HUBBARD. It is possible that they would have no occasion to engage in this work. If they are to be in the Government service, it had better be so stated.

Mr. BURTON. I would not exactly want to put it in that way, unless it is to be for a mere temporary commission. In that case legislative members might be eligible.

Mr. STEVENS. I think that the legislative members had better not be excluded. At the same time, you have had a great amount of service along this line as chairman of one of the greatest committees of the House, handling one of the great interests of the country, and if you were disassociated from it, it might perhaps put you in a better position to criticise.

Mr. BURTON. All that I should be willing personally to do in regard to this or in regard to any other legislative matter would be to continue it long enough to throw more perfect light upon the question of the relation between railroads and waterways and the question of the proper policy to be pursued in the future in the development of waterways.

Mr. STEVENS. I can see that this view of it is worthy of consideration. The trouble of it is that these gentlemen do not see anything except the technical side of it. These gentlemen do not see the legislative side of it at all. It would be well to have some one on it who is familiar with the framing of legislation. I think that is tremendously important. But the difficulty is that a man like yourself, for example, becomes committed in a way to a plan. Then you are the champion before the committee and before the House of that plan.

Mr. ESCH. There is this to be said about that: You know the House has rarely given much consideration to commissions created outside. The more members you get on the commission selected from the House the more respect is paid to their recommendations.

Mr. BURTON. Senator Aldrich, you know, objects to a currency commission with any outside members on it. He insists that it shall be made up wholly of members of the Senate and House.

Mr. STEVENS. That makes it necessary for us to lay down a policy with respect to this Commission. Would it be best to have a legislative commission or not?

Mr. RICHARDSON. What we ask for is the very best we can get; men of the very best experience. How would the fact of being a member of the Rivers and Harbors Committee interfere with your duty and experience in the Waterways Commission? We are inaugurating a new plan, and we ought to commence it right, and I believe that to exclude legislative members of experience and ability and understanding of the question would be to take away from that Commission the benefit of their advice and suggestions, and it would be a wrong to the public service.

Mr. STEVENS. If there is any reason at all why such legislative representation should be had, it ought to be stated in this bill and have it provided what it should be.

Mr. BURTON. If it is a permanent commission, to go on right along, I do not believe in having legislative members on it at all.

Mr. HUBBARD. Could the divergent views be reconciled by a provision to continue the present members in office for a time, and then reconstitute the Commission by having no legislative members on it?

Mr. BURTON. It could be. I think it would be best to give this Commission a life that lasts only another year from the present time. I believe if you could take that bill and carry it through the Senate and House right now it would be a good thing on that theory. I am fearful that you can not do that. Now, you are up against two problems: What is best to do? What can we do? Now, for some reasons,

it seems to me it would be better to have a temporary commission, one of investigation, to see what they can do.

Mr. STEVENS. Then I would suggest---

Mr. RICHARDSON. It is too big a proposition to deny ourselves, or to deny to the public, the benefit of men of experience, because some of the greatest questions would come up, about the rights of the States, and the rights of the Federal Government, and the exercise of jurisdiction.

Mr. BURTON. The argument for a continuance of the present members is this: They have given a year or more of attention, and pretty close attention, to these problems. To abolish the old and create a new commission would prevent the full utilization of their investigations.

Mr. HUBBARD. The transition would be too abrupt.

Mr. BURTON. And with the other men coming into the place there would not be quite the same harmony as with the whole original one.

Mr. HUBBARD. And they would waste time by going back over the track already trod.

Mr. STEVENS. Then why not start out with this proposition, "That the Commission, appointed by the President on such a day, composed as follows, be, and is hereby, authorized to do such things," and then go on with your authorization, and then authorize him to fill any vacancies that may occur for any reason or other, and then provide the time when their life shall expire?

Mr. BURTON. Yes. I would like to consult a little with my own associates about that. They will be satisfied with that, I am sure.

Mr. STEVENS. And then recite these purposes.

Mr. BURTON. Suppose I take this, and with your suggestions here, frame it up, and frame up another bill right along that line. Would you prefer that I do that?

Mr. STEVENS. Yes.

Mr. HUBBARD. In that same connection, Mr. Stevens, let me ask what the practical effect would be with reference to the probability of passing the bill? Do you think it would stand a better chance if limited in that way?

Mr. BURTON. I think it would. Don't you think so, Esch?

Mr. ESCH. Yes. That is a recognition of a temporary Commission appointed outside of Congress entirely.

Mr. BURTON. It is a limitation on the Commission, and in the next place their work is confessedly unfinished. Those who are rather in favor of it say they would rather continue it.

Now let us run through the rest of it. I think the main part of it would come in either one, "that such Commission shall meet annually and at such other periods as the President or Congress may require." Do you think it would be better to say "Congress?"

Mr. STEVENS. I think so.

Mr. HUBBARD. If you are going to limit it to a year or so, you want to change that phraseology.

Mr. STEVENS. "To make report to Congress annually." That is the usual report provided for all these commissions. Would it not be better to make it last longer than a year?

Mr. BURTON. Yes. I will tell you why it is better to let it last longer than the year 1909. The experience with our Commission was this, that we sat here last May in session quite a while, and then

we got together on the Mississippi River and took a trip down the Mississippi River to New Orleans. Some members stayed rather longer than I did. Then we met again in September and went up to the Lakes. Then we met here two weeks before the session of Congress opened, and those two weeks lapped over, the sessions lapped over, after the meeting of Congress. Those two weeks really represented the most important part of it, because we had the experience and information, and got right together, and sat day after day, and came to certain conclusions. We sat about every other day, until about the middle of January. Now, our work might be incomplete in one year, or it might be incomplete by the 1st of December of 1909.

Mr. HUBBARD. You do not mean 1909? The 1st of next January?

Mr. BURTON. No. I think it would be well to have the time extended over to——

Mr. STEVENS. To the 1st of July, the beginning of the next fiscal year?

Mr. BURTON. It is better to take into account the fact that the work will be done after Congress sits; more likely than otherwise about the time Congress sits.

Mr. HUBBARD. You might want to legislate further before this Commission expires.

Mr. STEVENS. Of course, Mr. Burton, if they could prepare a report before the 1st day of January, it would be a great advantage in legislation.

Mr. HUBBARD. Provide for a report by the 1st of January, and then for a final report by the 1st of July.

Mr. ESCH. This provides "such other periods as may be required."

Mr. BURTON. Yes; "full and complete reports of all their acts and doings, and of all moneys received and expended, which report shall be submitted to Congress."

Mr. ESCH. No; not unless you make it to Congress.

Mr. BURTON. That goes out. "Such Commission shall report annually and at such other dates as may be required by order of the President;" "full and complete reports of all their acts and doings, and of all moneys received and expended."

Mr. ESCH. With all recommendations? The acts and doings are not as important as the recommendations. That is what is to govern us, the recommendations.

Mr. BURTON. That is a good suggestion.

Mr. STEVENS. Can not the President or the chairman of the Commission provide officers?

Mr. BURTON. I do not know whether you favor having special quarters or not. Perhaps it would be well to have authority to get them.

Mr. STEVENS. Let the Commission choose a chairman, "who shall cause to be provided for the use of such Commission and its employees under this act such offices," etc.

Mr. HUBBARD. As to the choice of a chairman, would it not be better to let the President designate it?

Mr. STEVENS. I would not bother him with it.

Mr. BURTON. It would be a good idea to have frequent elections. That could be changed so that it could not be laid on the President.

Mr. STEVENS. Now, in section 4 this committee has no authority to appropriate. That is subject to a point of order. All we do here

is to authorize light-houses and revenue cutters and everything of that sort, and then the actual appropriation is made elsewhere.

Mr. BURTON. It should be authorized to be paid. How about the amount?

Mr. STEVENS. It would be better to cut it down.

Mr. BURTON. Cut it down to at least \$50,000.

Mr. ESCH. Would your knowledge of the first year's expenditures give you any idea of what you ought to have?

Mr. BURTON. No. We paid our own expenses on a good many of the trips. It is true we traveled in Government boats twice down the Mississippi River, once from St. Paul clear down to Memphis, and the next time from St. Louis to New Orleans. The great expense to me was railroad fare, with the secretary, several times to New Orleans, and Cleveland once, and Memphis. Fifty thousand dollars would be ample.

Mr. STEVENS. Would it not be wise to say this, not "under the direction of the President," but "under the direction of the Commission?" This is a legislative body, and they ought to have authority to expend the money if there is any confidence reposed in them at all.

Mr. BURTON. "To be expended under the direction of the Commission?" I would just as soon let it stay under the direction of the President. But is it not unusual to have Congress appoint a body that reports to it, and then have the President supervise it?

Mr. STEVENS. Yes. Would it not be better to have some provision to the effect that members who are already receiving salaries from the Government shall receive only their actual expenses?

Mr. BURTON. We had better strike out "any moneys," and so forth.

Mr. STEVENS. That is the very last proviso. There would be objection to it.

Mr. BURTON. You believe in this sort of a bill that we should invite municipalities and officials to cooperate?

Mr. STEVENS. Yes.

Mr. BURTON. And provide for examinations to prevent duplication?

Mr. STEVENS. Yes; and that no salary shall be paid to a Government official.

Mr. HUBBARD. How are you to arrange for the payment of salaries for those not already on the pay roll?

Mr. ESCH. The question would be, Would the House want to support a proposition that is practically without a limit?

Mr. STEVENS. In what way?

Mr. ESCH. In regard to salaries.

Mr. BURTON. Of course, there is a practical limit to the amount here, \$50,000.

Mr. HUBBARD. Is there anyone on the Commission now not receiving a salary from the Government?

Mr. BURTON. No.

Mr. STEVENS. What does McGee do?

Mr. BURTON. He is in the Bureau of Soils, Department of Agriculture.

Mr. HUBBARD. Would it not be well, in the provision providing for the filling of vacancies, to provide that they shall be from some branch of the Government service?

Mr. STEVENS. Is that a wise thing?

Mr. BURTON. Here is a proposition that might make it desirable to have salaries paid: We thought we would like to put on a railroad and a steamship expert to help us. Really the men were selected. One of them is a man who has been a railroad president, and by change of management was thrown out. He is one of the very best railroad men in the country, a man very familiar with inland navigation. This man would have to be outside the Government service. I do not think there should be a restriction.

Mr. HUBBARD. What is your provision here for employing advisers?

Mr. BURTON. Is the power to appoint subordinates usually put in?

Mr. STEVENS. Yes.

Mr. ESCH. It is usually provided that it shall have such right "to employ experts and stenographers, and so forth, as may be deemed necessary."

Mr. STEVENS. It was in the old Merchant-Marine Commission.

Mr. HUBBARD. Let the Government officials be continued in that way, and authorize them to employ or appoint assistants.

Mr. BURTON. You mean authorize the Commission to appoint them?

Mr. HUBBARD. Yes.

Mr. BURTON. If there should be time, and I shall be a member of that Commission, I shall want to bring some of the leading experts in transportation before it, and their traveling expenses should be paid.

Mr. ESCH. And there should be a provision giving the right to summon witnesses and examine books and papers.

Mr. BURTON. That would involve an examination more extended than perhaps we would want to go into. If we wanted anything of that kind we would want to call on the Interstate Commerce Commission; and besides that, if that were put in, it might arouse opposition.

Mr. RICHARDSON. There is a heap of that examination of books going on already.

Mr. HUBBARD. How do you express that subpoenaing of witnesses? Would you not compel any man to come who did not want to come?

Mr. BURTON. What do you think of that?

Mr. STEVENS. I do not think it would do any good.

Mr. BURTON. We perhaps had better leave that out. Last night I sat next to Mr. Hill, and I intended to speak to him about that, but I forgot to do it. But I know he will come.

Mr. HUBBARD. Any man will be glad to come if he is worth hearing.

Mr. ESCH. An emergency might arise when it would be very valuable to have a witness come.

Mr. BURTON. I think what we want here is men skilled in the science of transportation, like Murray, of Baltimore, or perhaps McCrea, of Philadelphia. I talked with Newman, of New York, about coming over some time, and he said he could furnish men "quicker on the trigger," as he expressed it, than he himself would be. He is president of the New York Central.

Mr. STEVENS. You remember Mr. Hill got up at 6 o'clock in the morning to take breakfast with you gentlemen and accompany you down to the steamer.

Mr. RICHARDSON. If you put that in, it would have a tendency to appear as if in conflict with the real object.

Mr. BURTON. I am inclined to think, Esch, that the increased benefit would be more than counterbalanced. In the first place you would not get anybody that you really wanted that you could not get in any other way, and in the next place it might attract some attention.

Mr. ESCH. The point I had reference to was as to witnesses to speak as to transfers of facilities and sites and the control and regulation thereof.

Mr. BURTON. There is a mass of information on that already. One of the most useful adjuncts of this Commission has been Mr. Herbert Knox Smith. He has been one of the most valuable members of the Commission.

I think that is all. I am very much obliged to you. I have got a lot of new ideas about this from having talked with you gentlemen.

Mr. ESCH. Expedition is very necessary.

Mr. STEVENS. We have a meeting on Friday. If you could frame this by that time, we could take it up on Friday in committee.

Mr. BURTON. There is one trouble about Friday. That is the waterway day up at the White House.

Mr. STEVENS. If you are going to have this bill introduced, you would have to introduce it before to-morrow night.

Mr. BURTON. Your recommendation to the full committee would no doubt go on this, so that it would not probably be necessary for me to be present then. I probably will have to be present at the White House in connection with the waterway delegation.

Mr. STEVENS. No, I do not think it would be necessary for you to be here.

Mr. HUBBARD. If that situation should arise, let us provide for a meeting here Saturday or some other time. We can arrange for a Saturday meeting in case it should be found desirable. If it is going along smoothly we may not need it.

Mr. BURTON. The President last night spoke to me about it, and it has run along with a great mass of things that we have had to attend to.

Mr. STEVENS. We have all been pressed for time.

Mr. BURTON. I am very much obliged to you, gentlemen.

Mr. ESCH. The bill was not introduced until the 20th of April. Our Calendar was so full that we did not reach it.

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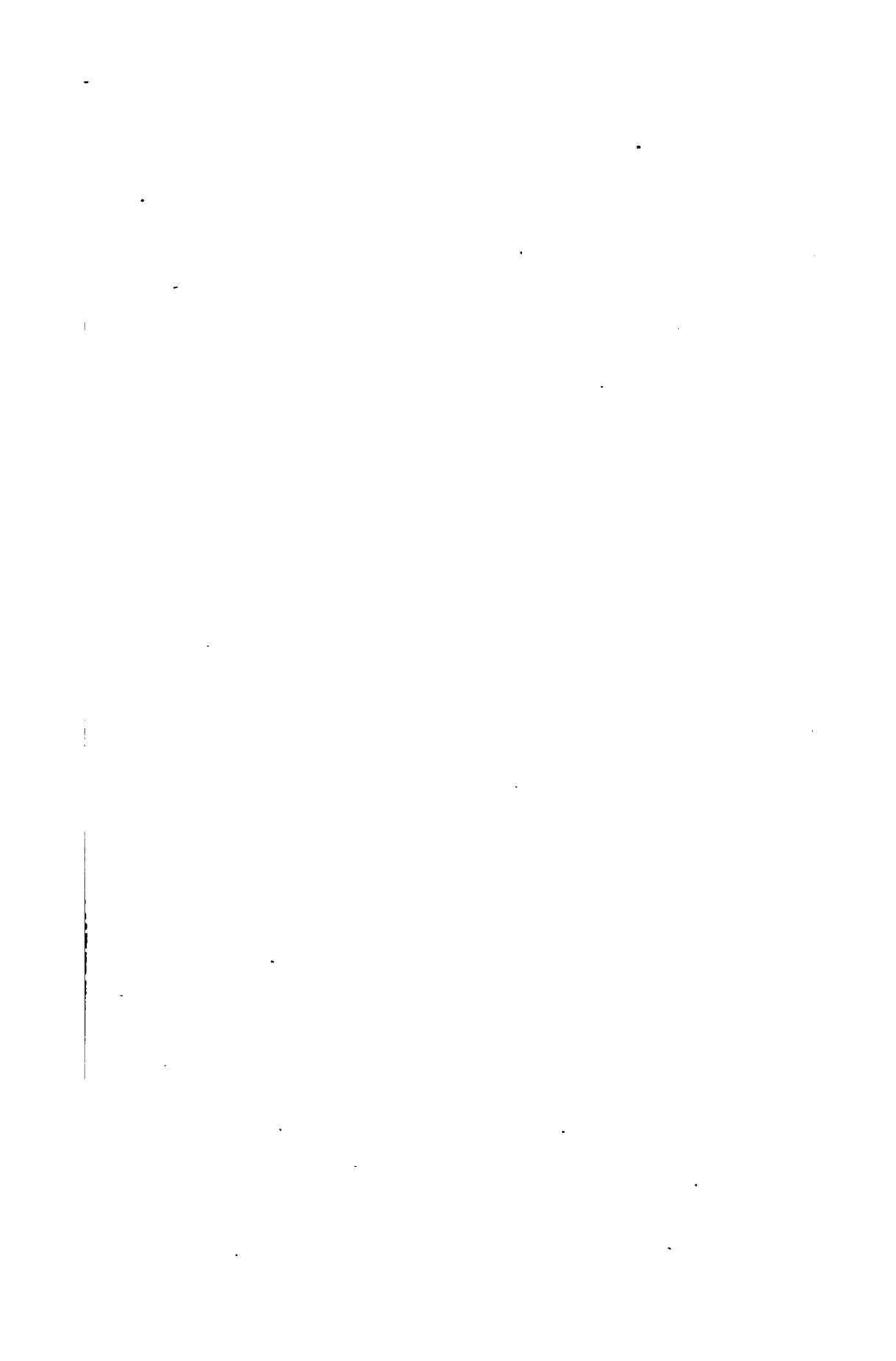
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COMPENSATION TO GOVERNMENT EMPLOYEES FOR INJURIES.

COMMITTEE ON THE JUDICIARY,
Monday, March 23, 1908.

Committee met at 11 a. m., Hon. John J. Jenkins in the chair.

STATEMENT OF HON. FREDERIC H. GILLETT, A REPRESENTATIVE FROM THE STATE OF MASSACHUSETTS.

MR. GILLETT. Mr. Chairman and gentlemen, I will briefly state the purpose of the bill which I have introduced, which is that this committee should adopt some measure that will allow employees of the Government who are injured in the course of their employment, in some way, to get compensation for their injuries. I do not think it is necessary to argue with the committee as to the merits of that proposition, as you know quite as well as I do that any employee working for anybody else can recover damages, while an employee of the Government can not, no matter how exclusively the responsibility of the Government is for the injury.

THE CHAIRMAN. I have not yet had an opportunity to look over the several bills that have been introduced. Is there any difference between them?

MR. GILLETT. There are three bills before the committee covering this proposition. The number of the bill that I introduced is H. R. 6284. I first introduced the bill in the Fifty-sixth Congress, six or eight years ago, and have introduced it ever since. I will not pretend that I was actuated entirely by public motives, but the reason it came to my attention was because in the city of Springfield, in my district, there is a large Government establishment, known as the arsenal, where they employ about 1,500 men, and this matter has been brought quite constantly to my attention. Secondly, I have given it a good deal of thought, and drew a law modeled somewhat on the Massachusetts law, which is much more conservative than that in most of the States. I introduced the bill at that time and have introduced it ever since, and, so far as I know, mine was the first measure introduced on the subject. Of course, what I desire is to have some law passed, and while I have no particular pride of opinion, yet of course all of us like to get what credit we can, and as I was the first one to start the project I should be very much pleased if something along the lines of my bill could be adopted.

MR. BRANTLEY. What kind of a law have you in Massachusetts?

MR. GILLETT. I will not take time to read this bill, but I will say in the first place that my bill covers persons employed as artisans or laborers in the manufacturing establishments of the Government, and in that respect it differs from the other bills introduced, which apply to all employees of the Government. I thought, taking the

conservative side, that the men who are engaged in the manufacturing establishments should be protected, and not necessarily the clerks and those in offices.

Mr. CLAYTON. That is, that there is no extra hazard as to clerks?

Mr. GILLETT. Not at all.

Mr. CLAYTON. And you wanted to reach the class who are subject to this extra hazard?

Mr. GILLETT. Exactly so, and limit it to that. Of course you may think that it ought to be broader. My bill provides that when a person is injured in a manufacturing establishment, and that his own negligence did not contribute to the injury, and the injury was caused, first, by reason of the negligence of his employer or, second, by reason of any defect in the ways, works, machinery, or plant connected with or used in the business of the employer, which defective condition arose from or had not been discovered or remedied owing to the negligence of the employer or of any person in the service of the employer intrusted with the duty of seeing that such ways, works, machinery, or plant were in proper condition; or, third, by reason of the negligence of any person in the service of the employer who is intrusted with the duty of superintendence or oversight, or in the absence of such a superior of any person acting as superintendent or foreman, with the authority or consent of such employer; or, fourth, by reason of the negligence of any person in the service of the employer to whose orders or directions the injured employee at the time of his injury was bound to conform and did conform, where such injury resulted in his having so conformed; so you see it is limited to those things. It is, as you see, very narrow as compared with most of the States, but what I wanted to do was to cover the persons in whom I was interested, and I also drew it in conformity with the conservative law of our State.

I suppose you would like to know something about the difference between the bills that have been introduced. Mr. Roberts has introduced a bill which applies to all employees, and which follows the Massachusetts law very much as mine does. The compensation recoverable under his bill would not exceed the sum of \$5,000. That is the method in Massachusetts.

Mr. ROBERTS. That is, in case of death.

Mr. GILLETT. No; in case of either death or injury.

Mr. ROBERTS. It is \$5,000 in case of death and no limit in case of injury.

Mr. GILLETT. But I put in a limit in all cases.

Mr. ALEXANDER. Mr. Roberts, does your bill follow the Massachusetts law and pay \$5,000 in case of injury—

Mr. ROBERTS. It does not follow the Massachusetts law in its limitation. There is no limit in the case of injury.

Mr. GILLETT. My bill also provides: "That no action shall be brought under this act unless written notice that an injury has been sustained is given to the representative of the United States in charge of the establishment or navy-yard by or on behalf of the employee within sixty days after the injury is received, and the action is commenced within one year after the injury."

That practically is all there is to the bill. In other words, it limits the persons who can bring an action to those employed in the manufacturing establishments and their recovery to \$5,000; it prohibits

an action in contributory negligence, and it specifies what kind of negligence the Government must be guilty of in order that the employee may recover.

The CHAIRMAN. Does your bill include those who are working for contractors of the Government?

Mr. GILLETT. No; those working directly for the Government and employed by the Government.

The CHAIRMAN. For myself, I am perfectly willing to tell you that I have no sympathy with this doctrine of contributory negligence so far as these cases are concerned. Supposing a man is injured, and at the same time, under the law, he is guilty of contributory negligence, but he is doing something for the Government, in aid of the Government, is performing his work, and yet at the same time he discovers after the injury that he was simply violating a law that he did not know anything about.

Mr. GILLETT. As I say, I leave that to the committee.

Mr. ALEXANDER. But that does not come into your bill at all?

Mr. GILLETT. I exclude contributory negligence.

Mr. ALEXANDER. But this measuring by contributory negligence as between employer and employee does not enter into your bill?

Mr. GILLETT. No; I do not make any provision as to that. In other words, my bill is drawn upon the statute of a very conservative State, and if the committee wishes to liberalize and to give more rights to employees, I am perfectly content; that I rest with the committee.

Now, as Mr. Sterling is not here, I want to call attention to the main principle of his bill, because it differs so radically from mine.

Mr. BRANTLEY. In what courts do you provide that suits shall be entered?

Mr. GILLETT. In the United States circuit or district courts.

Mr. BRANTLEY. Suppose the action is in excess of \$2,000, what do you say as to that?

Mr. GILLETT. Simply say that the employees shall have the right of action against the United States, to be brought in the United States circuit or district court in whose jurisdiction the injury occurred.

Mr. CLAYTON. That means regardless of the amount involved, and whatever they may claim?

Mr. GILLETT. Yes.

Mr. BRANTLEY. Would not that repeal the statute as to the amount that I have named?

The CHAIRMAN. If an employee was injured here, would he not have to go outside of the city into either Virginia or Maryland to institute his suit?

Mr. ALEXANDER. You could put in the Court of Claims there, or something of that kind.

Mr. GILLETT. I had not thought of that, and it seems to be a fair suggestion.

Mr. ALEXANDER. Or you could make it the supreme court of the District of Columbia.

Mr. GILLETT. Yes; that could be inserted.

Now, I think it would be well for you to have in mind the difference in principle between my bill and the bill of Mr. Sterling. His does not give a right of action in the courts at all. His bill provides that when anyone is injured, not only in the case of the employee in a manufacturing establishment but any employee of the Govern-

ment, that employee shall go before the Secretary of Commerce and Labor and that the Secretary shall have the right to award damages. It leaves it to him. He determines the damage, not in so many dollars, but according to the amount of the wages paid, the wage that the man receives, and I think it provides that in case of death the family shall receive ten times the average yearly wage of the employee for the last ten years. If, as between the two principles, you may think it better to leave it to the Secretary of Commerce and Labor instead of to the courts, I do not care to express any opinion upon that. I simply wished to make my position clear, that I would be glad to have any act passed which will give this class of employees a right of recovery, no matter whether you think it wise to go to the courts or to the Secretary of Commerce and Labor.

Mr. BRANTLEY. It is simply the broad proposition of authorizing any artisan or mechanic to sue the Government in case of injury, and in case of death the suit may be brought by his survivors?

Mr. GILLET. That is all.

Mr. REID. It is a common-law liability—that is, it would be the same as though the Government was an individual or a corporation at common law?

Mr. GILLET. No; I specify that he can not be guilty of contributory negligence, and then I specify certain negligence on the part of the Government that might contribute to his injury.

Mr. BRANTLEY. In Massachusetts does the State have to give permission before anybody can bring suit?

Mr. GILLET. Certainly.

Mr. BRANTLEY. And in all such cases you do give permission under the statute, do you not?

Mr. GILLET. I do not think we do, but I do not know of any manufacturing establishment belonging to the Commonwealth of Massachusetts.

Mr. ROBERTS. Excepting those in the prisons.

Mr. GILLET. But there is no right of action there. But the United States has a great many manufacturing establishments, the one at Springfield employing 1,500 men—although the men who are here representing them can tell you more about that than I can—but the facts in the case and the large number of men that are engaged in this work, it seems to me, makes it unquestionable that they ought to have some right of action. I think the only reason that they have not been given this right is the inertia that protects us all, and we have not come up yet to the idea of putting it through.

The CHAIRMAN. It seems to me that a part of Mr. Sterling's bill is worthy of consideration. Supposing that an employee meets with an accident, and the liability of the Government is immediately established. Under your bill he can not settle with the Government, can he?

Mr. GILLET. He would have to bring suit.

The CHAIRMAN. He has to bring his action in damages, and must go on with his suit, when really the Government would be glad to make an adjustment of the matter. I am merely making a suggestion in regard to the bills, and it is possible you may be able to get together and present a bill that will meet the approval of the committee and do substantial justice to all of these people.

Mr. GILLETT. Mr. Roberts has in his bill a clause providing that the head of each Department may compromise with the employee, which practically would accomplish the same end you speak of. But of course, practically, that could be accomplished under this bill—that is, a man could settle with the Government, but he would have to enter suit, and the Government would have to agree to a certain amount of damages and have judgment entered.

The CHAIRMAN. We, as lawyers, all know the difficulties. The Government official would think it his duty to reduce the amount of damages as much as possible, the case might be prolonged, and before final judgment is entered it might be necessary for the employee to come to Congress to get satisfaction. It would seem to me that, in the meantime, there could be some arrangement made whereby a settlement could be brought about.

Mr. GILLETT. Yes; there is a clause in Mr. Roberts's bill which allows each Department to settle. But under my bill, if the Department wished to settle, of course that could be brought about. The judgment would be entered up, but it would be a simple matter to adjust that.

The CHAIRMAN. The only objection in that, to my mind, would be that he would have to hire a lawyer, increasing the expense, and diminishing the recovery, while under some other arrangement he might be able to get the benefit of the entire amount.

Mr. GILLETT. Yes, I recognize that; and Mr. Roberts has a bill with a clause in it providing for that.

STATEMENT OF MR. E. L. ADAMS, OF WASHINGTON, D. C., REPRESENTING THE MACHINISTS EMPLOYED BY THE GOVERNMENT.

Mr. ADAMS. I do not know that there is a great deal I can say upon the proposed measures being considered by this committee, but I will say this, that I have taken occasion to forward the bills that have been presented to Congress to our several organizations in localities where there are Government plants, including the Springfield Arsenal, which is in Mr. Gillett's district, and they have seen fit to indorse the Sterling bill. It was our purpose at one time to propose a measure here, and in that measure we were to provide for a suit by the injured person to recover damages, but it was brought to our attention that there was some opposition existing in Congress, some antipathy, against litigation of that kind. It seemed to be unwise to some to place the Government in the attitude of being called upon constantly to defend itself against suits that might be of a trifling character, and for that reason it was thought best that if we could find some measure that would relieve the employee of embarrassment and delay incident to litigation, that it would be far more beneficial in its effect to the employees.

Mr. ALEXANDER. Do you indorse the principle of Mr. Sterling's bill?

Mr. ADAMS. Yes, sir. The Sterling bill we have gone over very carefully and we believe it is reasonable in its provisions and at the same time it embraces every employee of the Government whose probable earnings are less than \$2,500 per year. The feature of the bill alluded to by Mr. Gillett, that the compensation granted is

based upon the earnings of the employee, we believe to be just. It is true that the clerks in the Departments are perhaps not engaged in the same hazardous duties performed by artisans and mechanics, and consequently there would be less money paid out on this account. The man is compensated according to his earnings, and we believe that to be right.

Mr. ALEXANDER. If you will pardon me for a moment, I will read for the benefit of the committee a little statement that Mr. Gillett kindly handed to me showing exactly what the Sterling bill contemplates as to payment:

The Sterling bill provides that if an employee is killed, his relatives wholly dependent upon him may have a sum equal to five years of his earnings, but not less than \$2,000 nor more than \$5,000. If he has relatives partially dependent upon him, they shall receive two years of his earnings, but not more than \$1,800; and the Secretary of Commerce and Labor, in whom is vested the power to make all decisions, shall determine the amounts and divide it among the relatives. If the man is incapacitated, he shall receive monthly payments of 60 per cent of his present earnings. When he has been ill twelve months, the Secretary shall cause a medical examination to be made, and if the injury appears to be permanent, the employee shall be given a sum equal to ten years of his earnings. The Secretary may cause a medical examination to be made at any time, and may increase or diminish the monthly payments.

Mr. ADAMS. That statement leaves out one very important point, that where he is injured he shall have 60 per cent of the monthly earnings providing the amount shall not exceed \$50 per month. We have rather figured on the number of years that a man shall receive pay for in the case of death, for the reason that we wanted the men who stood most in need of getting the benefit of it to receive it. We should rather now, if any change is contemplated by this committee, that instead of raising the maximum amount to \$5,000, to raise the number of years they could recover for. That helps the poorly paid mechanic and laborer, and that is why we like it. You will notice further that where a man employed by the Government is killed without any dependent relatives, he can only recover to the extent of \$150 for the purpose of paying his burial expenses, it being drawn with the idea, at least, of leaving those who are actually dependent upon the employee at the time of his death so that they can recover fully under the act, and if they are partially dependent it provides for that. If they have no one dependent upon them, then they recover an amount sufficient to afford them a decent burial. It may be said that the bill leaves a great deal of discretion in the Secretary of Commerce and Labor, and it might result in some embarrassment at some future time. We can not tell, we do not know, how it would be administered; no one can foretell that. We hope, however, to have a liberal administration of it. I presume the idea in leaving this to the discretion of the Secretary of Commerce and Labor is that where a man dies, who is employed by the Government, and perhaps leaves two children, one of them would be wholly dependent upon the employee who has lost his life, while the other may be sufficiently old, a boy, to earn his own living. And it does seem in a case of that kind the child wholly dependent upon him should receive the benefit paid by the Government because of the man's death. All of the employees whom I have heard from up to this time are in favor of the Sterling bill. Of course we appreciate very much the efforts of Mr. Gillett and Mr. Roberts, and other Members of Congress, who are seeking to

have some legislation of this kind enacted, but for our purposes we favor the Sterling bill.

Now, I do not think there is anything further I can say excepting that the normal force employed in the navy-yards is about 16,000 men, though I do not suppose there are quite that number in the arsenals, so it would be difficult for me to say at this time what the number of employees affected by this bill is. We have arsenals at Springfield, Watervliet, Philadelphia, and Rock Island.

Mr. CLAYTON. Have you any figures or data showing the number of men among these 16,000 that you spoke of, the number per annum killed or injured by accident while in Government employ and as a result of that employment?

Mr. ADAMS. I have tried to get some data along those lines. I was in the dispensary of the Brooklyn Navy-Yard a day or two ago, and I found that there were no records kept of what happens there.

Mr. ALEXANDER. Mr. Adams, how long have you been employed at the Washington Navy-Yard?

Mr. ADAMS. I have been in Washington since 1898.

Mr. ALEXANDER. In that ten years how many accidents have occurred at the navy-yard in Washington?

Mr. ADAMS. It would be difficult for me to say. I believe that the number of accidents occurring in the Government plants is very much less, in percentage, than those occurring in private plants of a similar character.

Mr. GILLETT. I may say that in Springfield, in the last year, I know of two accidents; and I should agree with the statement made by Mr. Adams; I think that is true.

Mr. CLAYTON. Were they bad accidents, Mr. Gillett?

Mr. GILLETT. One was serious and resulted in the loss of an arm. The other was where an employee received a bullet in his leg and was away probably for six months.

Mr. CLAYTON. By the explosion of a cartridge?

Mr. GILLETT. No; they were testing rifles down below, and the bullet glanced up through the floor.

Mr. ALEXANDER. There was no contributory negligence there?

Mr. GILLETT. Not the slightest.

Mr. ADAMS. I should imagine that the number of accidents that had occurred in the different navy-yards would be interesting, but so far as I am concerned I do not know how to get them.

We are very anxious to secure some action at this session of Congress, and I am sure that the machinists will appreciate it very much if this committee should report the Sterling bill or something equally as good. The bill has been indorsed, I believe, by the American Federation of Labor, and has been indorsed by the different labor organizations having jurisdiction over the Government plants.

Mr. CLAYTON. Do you not think that this Sterling bill is very broad in its provisions? It provides that the Government shall be liable to civilian employees "whose compensation is, or probable earnings are, less than at the rate of \$2,500 per annum." Don't you think that is rather broad, for it takes in clerks and various employees who do not assume any special risk or hazard on account of their employment? I understood that the primary object of a law of this kind was to afford some means of compensation in case of injury or death to people who are in arsenals and navy-yards, where the work is extra

hazardous. Do you think that Congress ought to be asked to include all civilian employees all over the country of every kind and character?

Mr. ADAMS. I will say this, that by reason of the fact that I represent the machinists my attitude might be interpreted to mean that they are only interested in themselves. Such view is not the case. I believe that most any man who undertakes to represent the laboring man, and represent him accurately, believes that every man should come within the horizon of his sympathies. For that reason we can not see why the Government should enact legislation applicable to one class of employees and not applicable to another; and we approve of every employee of the Government coming within the provisions of this enactment.

Mr. ALEXANDER. In other words, you think that if an elevator of the Treasury Department is coming down and through neglect of the Government it drops 40 feet and kills half a dozen clerks that they should recover as well as others?

Mr. ADAMS. I think so.

Mr. CLAYTON. Well, let us take a case like this: Here is a city delivery letter carrier who is run over by an automobile. He is carrying letters; there comes along a reckless man in an automobile, and it runs over him. Do you think the United States ought to be liable in that case?

Mr. ADAMS. It would be a most difficult thing for me to say, by the mere citation of a case, without knowing the details or the circumstances surrounding it. I dare say that the Secretary of Commerce and Labor, who would be charged under this bill with the administration of the law, would require more information than that volunteered by the gentleman.

Mr. CLAYTON. I am not volunteering any information, but you are proposing to Congress to enact legislation. Now, we ought to know the scope of the legislation in order to legislate intelligently, and we want to know the extent to which this may go. Would it reach the case of the letter carrier that I have spoken of?

Mr. ADAMS. Certainly; it would reach his case to this extent, that inquiry would be made by the Department of Commerce and Labor as to whether the letter carrier in question was willful or malicious in his conduct.

Mr. CLAYTON. I am not putting it upon that ground. The letter carrier, we will say, is regularly in the discharge of his duties, and is crossing from one side of a street to the other carrying his letters. There comes along a reckless automobilist, who runs over him and kills him.

Mr. REID. Do you mean an automobilist in the employ of the Government?

Mr. CLAYTON. No. The letter carrier is afoot, walking along the street in the discharge of his duty, carrying letters, and is killed by the automobile. Do you want the Government to be liable in a case of that kind; is that the purpose of your bill?

Mr. ADAMS. That involves legal questions that I do not think I am prepared to answer.

Mr. ALEXANDER. Would you suggest, under those circumstances, that the letter carrier sue the automobile owner and get his damages in that way?

Mr. ADAMS. The same condition might apply to the letter carrier that would in all probability apply to the railway mail clerk under the same act; he would have redress against the railroad company, and the letter carrier might have redress against the owner of the automobile.

Mr. CLAYTON. But I am not talking about that. You are seeking to change the relation of the Government to the employee, and you are permitting the employee to sue the Government. You want to let every civil employee of the Government have a right of action against the Government without let or hindrance. Is that your position?

Mr. ADAMS. My position is this, that every civil employee of the Government shall be compensated under this act who has been injured in the performance of his duties, and such injury is to be investigated by the Department of Commerce and Labor.

Mr. ALEXANDER. It is suggested to me by Mr. Diekema that this is an accident insurance bill.

Mr. CLAYTON. Yes; of course, it would make the Government assume the position of insuring every employee against accident.

Mr. ALEXANDER. That would be the practical result.

Mr. ADAMS. Accidents received in the performance of duty.

Mr. DIEKEMA. But not necessarily arising from the performance of duty.

Mr. REID. That is the point I want to get at.

Mr. ADAMS. I do not know that I am prepared to answer that question.

Mr. ALEXANDER. Carrying out Mr. Clayton's idea, which opens up a large field, supposing a letter carrier is delivering letters in a city and he slips on the ice upon the sidewalk and breaks a leg. Now, a citizen, not a Government employee, would have a right of action against the municipality, but you, under this bill, would say that the letter carrier should be paid by Uncle Sam also.

Mr. ADAMS. Do the provisions of the bill suggest that to the mind?

Mr. CLAYTON. They do, because the bill says "in the course of the injured person's employment." Under that you would make the Government an accident insurance company.

Mr. ADAMS. Does not this suggest itself to your mind, that if this particular letter carrier has to pursue an employment that leads him into these hazardous ways, that he could and should be compensated for the injury?

Mr. CLAYTON. I want to know the scope of your bill. No; I do not think the Government of the United States should run an accident insurance business, because there would be no end to it. But take another case: Suppose the doorkeeper sitting at his post out here, who is an employee, and whose business it is to sit there, is attacked by a ruffian, who beats him nearly to death. Do you think the Government ought to be liable in a case like that?

Mr. ADAMS. It seems to me that the Government undertakes to provide police protection for its buildings, and if it does not provide adequate police protection it should be responsible.

Mr. CLAYTON. Suppose a messenger from one of the Departments is sent out on some mission by that Department, and some person disconnected with the Government, in some accidental or malicious

way happens to injure him. Do you think the Government ought to be liable there?

Mr. ADAMS. The question would arise whether he was injured because he was a messenger or because of his own personality.

Mr. CLAYTON. Then it resolves itself into this, that if he is injured in any way, from any source, just because he is performing work or doing something in the course of his employment by the Government, you think the Government ought to be liable. The bill says, "in the course of the injured person's employment;" that is the language.

Mr. ADAMS. You will find that the bill provides for investigation on the part of the Department of Commerce and Labor.

Mr. CLAYTON. But that is merely a detail in the administration of the law. I am talking about what the law shall be, not the administration of it.

Mr. ADAMS. For my part, personally, I believe this: An employee, if injured in the performance of his duty, should be compensated for it regardless of what his particular duty may be. If he is unfortunate enough to be a clerk, he should be compensated just the same as if he were a mechanic.

Mr. CLAYTON. Do you not think that there are a great many people in this country anxious to be "unfortunate" enough to be clerks?

Mr. ADAMS. I am not advised——

Mr. CLAYTON. I think that if you go down and consult the records of the Civil Service Commission that you will find several hundred thousand, may be half a million, yearning for that "unfortunate" condition, and quite willing to accept clerical positions under the Government.

Mr. ADAMS. That might be true at this particular time.

Mr. CLAYTON. Do you think that on account of the present panic it is limited to this particular time?

Mr. ADAMS. I suppose that there would be more now than at other times, probably.

Mr. CLAYTON. I think the yearning for the "unfortunate" condition goes on all the time. That is my experience, and I have been here ten years. I think that those desiring to be put in the category of the "unfortunate" citizens who hold clerical positions in the Government is increasing every year.

Mr. ADAMS. Now, I have said about all I care to say——

Mr. REID. I would like to ask you one question before you sit down. The bill provides for an investigation by the Department of Commerce and Labor. What do they investigate; what is the purpose of their investigation?

Mr. ADAMS. The purpose of their investigation, as I understand the bill, is to find out if the person injured has been willful or malicious in his conduct in bringing about the injury.

Mr. CLAYTON. Guilty of contributory negligence?

Mr. ADAMS. Grossly contributory negligence.

Mr. CLAYTON. But it does not involve the idea of negligence anywhere upon the part of the Government.

Mr. ADAMS. No; not as I understand it.

Mr. CLAYTON. It creates an absolutely new liability upon the part of the Government, and one unknown before.

Mr. ADAMS. Yes; as I understand it, the bill is unique in the liability laws of this country, but it is something that has been in vogue

in a great many countries of the world, and it works successfully. Doctor Neill has gone over this bill, and probably knows a great deal more about it than I do, and I am sure the committee would be glad to hear what he has to say upon the measure.

**STATEMENT OF MR. CHARLES P. NEILL, COMMISSIONER OF
LABOR, WASHINGTON, D. C.**

Mr. NEILL. I will say, gentlemen, that I am not appearing at my own initiative. Mr. Sterling sent me copies of these bills, and asked me if I would appear before the committee to-day and discuss the matter with them. I have gone over the subject carefully, and perhaps I can indicate in just a word the principal differences between the bills. In the first place, the Sterling bill does away entirely with any doctrine of negligence on the part of the Government. It makes the Government liable for all injuries arising out of employment, irrespective of whether there is any negligence on the part of the Government or the Government officials. In that respect the doctrine is new in this country. We are the only country in the civilized industrial world that has not accepted those doctrines. In every European country the principle has been adopted that the employer shall bear the entire trade risk, irrespective of whether there be neglect on its part for the accident or not. In some countries in the case of neglect the employer can be sued as under the liability act. Where there is no neglect on his part, the employee has a right of recovery through compensation, as in this bill. That is the view I have taken—that if there are double risks in any trade somebody has to bear them, and it is just as fair, it is more fair, that the consuming public through the employer should bear that loss than that it should be borne by the particular employer on whom the accident falls. In the second place, the Sterling bill pays a fixed compensation for injury or death, requiring no suit, while the bills of Mr. Gillett and Mr. Roberts require suit.

Mr. ROBERTS. Pardon me, but you are not familiar with my bill if you say that. My bill provides for an adjustment by the Department.

Mr. NEILL. Yes; the right of compromise, but it gives the employee the right of suit.

Mr. ROBERTS. It gives him the right to sue if he can not adjust his difference with the head of the Department. The practical result would be that the employee first would endeavor to have the head of the Department make compensation under the law, and, failing in that, he would have the right to sue.

Mr. NEILL. There are no regulations governing the head of the Department as to the fixing of the amount.

Mr. ROBERTS. Excepting \$4,000 in case of injury and \$5,000 in case of death.

Mr. NEILL. As I read the bill, the first provision gave the employee the right of suit and, secondarily, permitted the head of the Department to compromise the case.

Mr. ROBERTS. But the ordinary result of that would be that the compromise would be sought first, and, failing in that, the suit would come in next.

Mr. NEILL. It also involves negligence on the part of the Government.

Mr. ROBERTS. Oh, yes.

Mr. NEILL. And that is the principal difference between the two bills. The Sterling bill does not require negligence on the part of the Government before any compensation is paid, and it does not require suit.

As I have said, that principle is used in European countries, all of them. In all those cases the compensation is fixed and defined along the lines indicated in this bill, and its administration is not a judicial matter. The discretion allowed to the Secretary of Commerce and Labor under this bill is very slight. His work is primarily to find out whether there is a real accident, and, secondarily, whether the accident comes within the law. The rest is simply a matter of computation as to how much should be paid. There are further provisions allowing him to distribute these amounts, for it would seem that if a man leaves two children who had been dependent upon him, one 16 and one 8, that it is manifestly inequitable to divide that fund equally between the two, for the 16-year-old boy is practically able to support himself, while the 8-year-old child would not be for a number of years. I can repeat what I said at the beginning—that in this respect, both in public and in private employment, the United States stands alone among all of the industrial countries of the world in still leaving the trade risk to be borne by the employee.

Mr. DIEKEMA. The Government service, or in general?

Mr. NEILL. In every European country the principle embodied in this bill applies to all private employment, and most of them have a provision that applies to the Government in exactly the same way as it is applied to private employment.

Mr. DIEKEMA. This bill limits it to the Government?

Mr. NEILL. Yes; limits it to the Government solely.

Mr. DIEKEMA. What possible excuse can there be for singling out the Government, especially here, for the application of the principle of insurance? It ought to go throughout the whole trade relations of the country, ought it not?

Mr. NEILL. I think it should, but there is this difference: In the domain left outside of Congressional action the United States will necessarily be behind the civilized world in all its relations of this kind. No State wants to put a burden upon itself, upon its industries, that is not borne by the industries of another State, and therefore it is very difficult—

Mr. REID. Is the burden upon the industry; is it not upon the consumer?

Mr. NEILL. Primarily it is placed on the industry, and then on the consumer. As I understand it the burden is not put on the consumer directly, for the producer can sell his goods cheaper. If you put this burden on one State and not on an adjoining State, that State which has the burden is simply injured to that extent, and therefore, as I said, it will always be more difficult to get progressive legislation in this country in industrial matters than in European countries; and so far as the Federal Government is concerned, or the power of Congress, I see no reason why the principle should not be applied generally.

Mr. REID. Suppose it is applied generally, what is your idea as to the effect of it in eliminating the safeguards usually observed to avoid accident? Would it eliminate that factor?

Mr. NEILL. I do not imagine anybody is going to risk accident or death for the sake of—

Mr. REID. Not for the individual himself, but those who provide safety appliances?

Mr. NEILL. No; because the burden rests upon the proportion of accidents, for if a man is insured, each industry is rated according to the efficiency of the protection, just the same as if you get insurance a man will be sent around to see that your building is in proper shape, and if not you will have to pay a higher rate; so if the employer sought to equalize burdens by taking out insurance, the rate of insurance would depend upon the safeguards of the employer in protecting his employees against risk.

I might say in regard to the Sterling bill, which I went over more carefully than the others, that there are a number of minor changes which from an administrative view point I think would improve it considerably.

Mr. ALEXANDER. Will you suggest them so that we will have it in the report. Have you it in brief form?

Mr. NEILL. No; I simply have a copy of the bill with the inter-lineations.

Mr. ALEXANDER. Suppose you indicate them and we will have the benefit of the suggested changes.

Mr. NEILL. I think it would save time to file it with the committee, and if the committee wants to know the reasons for the changes I would be very glad to submit them in writing.

Mr. CLAYTON. I did not understand you to state in the beginning from what organization or from what Department of the Government you come?

Mr. NEILL. I am in charge of the Bureau of Labor.

Mr. CLAYTON. Do you come at the instance of the head of the Bureau of Labor?

Mr. NEILL. I am the head of the Bureau of Labor, and I come at the instance of Mr. Sterling, and I also think I had an invitation from the chairman of the committee.

Mr. CLAYTON. I wanted to know in what capacity you came.

Mr. NEILL. I think I stated at the beginning that I did not come at my own initiative.

Mr. CLAYTON. Oh, it would be all right if you would, but I wanted to ascertain the facts, that is all.

Mr. NEILL. I would like to make one more suggestion to bring out a point that Mr. Adams was discussing. It seems to me that when it comes to a question of this kind, of hazardous employment, it is hardly fair for a man—for example, take an occupation in which the injuries are 10 per thousand, and another occupation in which the injuries are 50 per thousand. It does not make a bit of difference to the man injured in the occupation of the less hazard, so far as his family is concerned; and, on the other hand, if the occupation is not hazardous the Government is called upon very rarely to bear the burden of damages. If I am engaged as a messenger in a Department, and am sent up to clean off the books of a library, and the ladder upon which I am standing breaks and my neck is broken, it

seems to me that it is not fair to say to my family: "You can not have the same compensation that would be paid to the family of another man, because his occupation is more hazardous." The family will say that the employment was hazardous enough to kill the man.

Mr. ALEXANDER. But under the Sterling bill you would rely upon the Department of Commerce and Labor to make the investigation to see if the employee knew that the ladder was not sufficiently strong.

Mr. NEILL. Certainly.

Mr. ALEXANDER. In order to find out how much contributory negligence there was.

Mr. GILLETT. May I say that there is no provision of contributory negligence in the Sterling bill.

Mr. NEILL. It speaks of "serious and willful misconduct;" and I might say that in every European country that same principle applies, it requires serious and willful misconduct. A man in any occupation becomes very much accustomed to the risks of that occupation. As you know, he will take the risks every day in the year, and if he does not take them he will lose his job; he would not be worth two cents as an employee. And therefore he becomes accustomed to them. As a matter of fact, as in all human occupations, he takes the chances, and continues to take them. Suppose the man did look at the ladder, he might have thought it was all right. Probably you and I might examine a ladder pretty carefully—I would not want to get on one at all, but if I climb up a ladder many times a day I will soon learn to take the chances, and that constitutes the viciousness of contributory negligence. It is an element of human nature in all hazardous employments, and it is perfectly natural that an employee should become accustomed to the hazard. Take the case of the bank, where a great deal of money is handled. We handle our money very carefully, while there it is thrown around like merchandise.

The railroad employee takes great chances in a way that soon becomes second nature to him, the risk wears off, and he does not think about it. Whenever the doctrine of contributory negligence is allowed to come in then you are penalizing a man for doing things that ninety-nine men in a hundred will do. In all of the large cities, Washington as well, people are constantly taking great risks in front of moving street cars; we all become accustomed to it. If I go up to New York City I will stand on a street corner ten minutes trying to get a chance to go across, while in the meantime the people who live there and who are accustomed to the risks, will be continually moving back and forth. It is pretty hard to say to us that because we become accustomed to these things we shall be guilty of contributory negligence and shall be penalized for it. But it really is penalizing the man's family. The British act goes so far that in case of temporary incapacity the "serious and willful misconduct" clause will prevent the man from securing compensation, but as I read the act—and my opinion in regard to this is subject to change, because it is hard to understand some of the British laws—in case of permanent disability, and in the case of death, the "serious and willful misconduct" does not count. If a man is killed and leaves a family, even if due to misconduct, the British government pays.

Mr. CLAYTON. Did the Sterling bill emanate from your Bureau?

Mr. NEILL. No, sir. I might explain, as to the principles involved in the Sterling bill, that the principle of employee's compensation

has been advocated by the President for several years, and we have looked into the matter. I think this bill was drawn by the counsel for the American Federation of Labor, and a good deal of information concerning it was furnished from my Bureau. Application was made for information regarding foreign laws, and I have discussed it with them a good deal.

Mr. CLAYTON. You were asked a while ago if you thought it unjust to include one class of employees and exclude another, and yet in the beginning of this bill you exclude a man who happens to receive \$2,500 per annum salary. Do you not think that the man who gets \$2,500 a year, who supports his family and carries his burdens, ought to be entitled to the same principles of justice that you mentioned a while ago and to receive the same recognition as the man who receives less? Upon what principle do you justify that discrimination?

Mr. NEILL. The line has to be drawn somewhere and on this account. It is assumed that if he earns enough to do so he will take care of himself and provide insurance for his family. My idea was this, that in presenting any bill there must be some reasonable limitation.

Mr. CLAYTON. That was my idea in asking the questions I did as to the limit with regard to hazardous employment, that there must be some reasonable limitations, and yet it does not seem reasonable to apply the limitations there and turn right around and, because a man is a little more efficient and is able to earn more money than the other man, say that he is to be excluded by reason of his greater earning capacity. Do you think that is fair and just?

Mr. NEILL. The whole basis for a bill of this kind is upon the fact that the earnings in a great many occupations are so low that a man can not make adequate provision for his family. He goes on the assumption that he has a certain span of life to live, during which time he will endeavor to raise his children. I said to a workman not long ago, a workman who was engaged in a hazardous occupation: "Do you carry any insurance?" And he replied: "I have about a thousand dollars, which will probably pay up my debts, leave enough for a decent burial, and also probably take care of my wife for a few months until she can get something to do." I said to him: "Does it not worry you to think of leaving your wife and your children, in case you are killed, in that shape?" And he said: "I do not think of it at all, because if I did I would not sleep at night." And I would say that that is the case with 95 per cent of the wage-earners of the country. They are saying that a man has an ordinary span of life in which he can take care of his family, bring up his children to the best of his ability, and if an accident should prevent that it ought not to cause such an undue hardship upon his family. An attempt is made in this bill to diffuse that so that the loss will not be so serious. The principle there is that any man who secures a sufficient compensation need not be provided for by the Government. In European countries they fix the same limit.

Mr. CLAYTON. I understand, but we are proposing to legislate here; what is done in Europe is not a guide here.

Mr. NEILL. But I assume that a principle which has recognition in every industrial country of the world is fair to suggest here.

Mr. CLAYTON. You can use that as an argument; it might be persuasive, but not conclusive. I remember that during the Spanish-

American war I made a visit to the navy-yard here, and I happened to see, I believe, two experts—I think only two—working on a 12 or 13 inch gun, putting on the finishing touches. I was told that there were only two men there who could do that, and I was also told that the Government paid them \$15 a day for their expert work, and I assume that they earned in twelve months more than \$2,500. You would exclude them, would you not? Yet there is a man who is shoveling coal right around the corner who would be allowed to come in and receive the benefit of such a law in case of accident, while if some support gives away and this 13-inch gun falls upon the skilled mechanic and kills him he gets no benefits. Do you think that is right?

Mr. NEILL. As I say, you can not draft a general law in which you can not point out inequalities and apparent injustices; but I say that the principle of this is to take care of the man's family. The man who receives \$15 a day is able to provide his family against accident that may occur to him.

Mr. CLAYTON. Perhaps he may have taken the President's advice, gotten the stork busy, and may have twelve or fifteen children.

Mr. NEILL. But \$15 a day would allow a man even with fifteen children to pay for insurance.

Mr. CLAYTON. But ought we not to frame a law on definite principles? Ought not principles to underlie a law that are sound? A man might well ask, if you put it at \$2,500, why not reduce it to \$2,000; and another one might say, why not reduce it to \$1,500? The use that you can put \$2,500 to is relative. I can go down into my district, the greatest on earth, where a man can live better than anywhere on earth, and by providing him with \$2,500 he can live like a lord, while a man with an average family in Washington, paying house rent and meeting the heavy expenses here, could not do well.

Mr. NEILL. You could hardly put it on the basis of cost of living. If the matter could be worked out so as to meet every particular case and do justice everywhere, it would be a very perfect law.

Mr. CLAYTON. Tell me where the principle of justice is in fixing this at \$2,500, an arbitrary figure.

Mr. NEILL. Anything you put in there is arbitrary.

Mr. CLAYTON. But some men would say, why not make it \$3,000? What argument would you present against that, the same as you present against the \$2,500?

Mr. NEILL. I would simply present the argument that there must be a line drawn somewhere, and \$2,500 is supposed to be a fair limit.

Mr. CLAYTON. By whom is it considered a fair limit?

Mr. NEILL. Whatever amount is embodied by Congress would be presumed to be a fair limit.

Mr. CLAYTON. I wish when you come back here again that you would get us some figures; I think you are in a position to do so. I notice that you leave the amount appropriated by this bill for the execution of it blank. I wish you would give us some information, some idea of how much we ought to appropriate, how much appropriation per annum this sort of legislation would entail upon the Government.

Mr. ALEXANDER. Our subcommittee, to which the Gillett bill has been referred, is very much interested in this hearing, and we would

be glad I know to take this subject up at some future day. We perhaps will not decide on that now, but we will give you notice, and if Mr. Adams will leave his address we will also send notice to him.

Mr. ROBERTS. There is a gentleman here who has come from Boston in the interest of my bill, and if the committee can fix a date for hearing him it would accommodate him.

Mr. ALEXANDER. So far as I am concerned, and I think that will meet the view of the other members of the subcommittee, we can hear him at 2.30 this afternoon.

Archibald Clements, 1908, knocked down by a sheet of canvas that broke loose by the wind, and fell down a hatch; fractured his knee and was badly shaken up; nine weeks.

Dick Burke lost an eye about five years ago; riveter.

Frank Grunno lost an eye; out from October 10 to December 10, 1902; chipper.

George Green lost an eye in 1899; fourteen weeks out; chipper.

Dennis Donohue lost an eye; chipper.

David Devol, hand smashed by shaper; out fifteen weeks; 1900.

John Griffin, hand smashed in shaper; out three months; February 25 to May 25, 1907.

Joseph Bettencourt nearly one year out with a broken leg in 1904.

CHARLESTOWN, MASS., April 19, 1908.

I, Archie Clements, employed as a ship fitter at the Boston Navy-Yard, make this statement in regards to injuries received while at work. Was at work in after 8-inch turret ammunition hoist when a large bench or trestle was blown by the wind over into the open barbette and struck and broke into the timber to which my staging was slung, allowing one side of my staging to fall and letting me down about 18 or 20 feet and sustaining a compound fracture of the left knee cap and a fractured left shoulder; also two badly sprained feet. It was necessary to have an operation on knee and was in hospital for six weeks and laid up for nine weeks and am unable to perform all forms of my usual work at present, and also am unable to get up and down stairs or kneel down on knee or to put my hand to my mouth after three months' time, as I was injured on the 10th of December, 1907. The doctor informs me that the knee will never return to normal condition, and that I will always be more or less crippled.

ARCHIE CLEMENTS.

BOSTON, MASS., March 20, 1908.

DEAR SIR: I was employed on March 3, 1908, at the Charlestown Navy-Yard, loading the auxiliary *Sterling* with anchors and chains, when the derrick fall hook caught the fore and aft hatch beam, dropping it into the hold, falling on my left foot, cutting off three toes and bruising the other two.

WILLIAM RICE.

MARCH 20, 1908.

I, William McClay, had a finger taken off my left hand by a reaming machine February 24, 1908; did not have proper use of my arms on account of close place to work and very hard to get at.

WM. MCCLAY.

On May 19, 1900, Dennis Donahue had a chip from a steel plate go in his eye, of which he lost the sight, and could not work for sixteen weeks. It happened on board the *Topeka*, in the Boston Navy-Yard. Married and has eight in family.

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REVERE, MASS., March 17, 1908.

The accident which left me afflicted for life occurred November 15, 1902. While at work in the anchor shop, Charlestown Navy-Yard, I scalded my right leg in a barrel of scalding water, sunk level with the ground with steam exhaust pipe running into it and no guard around it or protection whatever. I was about my work getting those tapered brick for the forge, which was stored up overhead. As I went to step back, not knowing that infernal trap was there, I fell into it. I was scalded from my toes up to my knee. I was laid up eight months. Doctor Andrews, of Beachmont, attended me. I also was taken to the Massachusetts Hospital, and there I was told by the doctors if they had had the case they would have amputated it, for it was what they called parboiled. But Doctor Andrews, being a very skillful physician, succeeded by applying powerful salves to eat off all the dead flesh down to the bone to save it, although he himself at one time was doubtful whether he would make a success. For six months I was confined to the bed, suffering unexplainable torture; then two months more before I could earn a cent. I went back to the navy-yard in June; had to walk with a cane, which I do even now. I was given a job to take charge of a toilet department, which I could do very well. After Captain Moore left the yard I was put back in the blacksmith shop, which was not suitable work for one in my condition, and I have been laid off a great many times when there was a lay off for several months at a time, also the 24 cents per day extra has been taken off my wages.

GUSTAVUS A. SMITH.

Colin C. Crawford, a coppersmith, while about his work in the fire room of the U. S. S. *Tennessee*, fell down a hole made by the removal of floor plate, and which hole he was unable to see because of a lack of light in fire room.

This accident resulted in the dislocation of his ankle and the crushing of a small bone in his leg, necessitating his removal to the relief station of the Boston City Hospital, where he was confined for ten days undergoing treatment.

This accident happened on August 30, 1907, from which date he was unable to regain the use of his ankle sufficiently to return to work until October 28, 1907, and it is very probable that he will always have a lame step, as he now walks with the aid of a cane.

On October 13, 1905, I was caught by the electric crane in the steam engineering department of the Boston Navy-Yard; my left hand was crushed, and is to-day in such a deformed condition that I am able to use it to very little advantage. My right arm was cut off at the shoulder. My head was cut open and it required seven stitches to close it. The ribs on the right side of my body were torn from my backbone. I was in the hospital for a month, and when I came out was unable for six months to do manual labor, and I am to-day, more than two and a half years from time of accident, unable to properly attend to the necessities of nature or to dress myself.

Sincerely, yours,

JOHN W. FLETCHER.

List of accidents at the steam engineering department, navy-yard, Boston, Mass. (civilian employees only).

January 5, 1907. F. E. Spain, left thumb badly cut.

January 17, 1907. Adolphus Jouanuet, hand badly cut in pattern shop. This developed blood poison. Injured man has not since been able to report for work.

January 17, 1907. R. H. Webber, thumb severely cut in pattern shop.

January 19, 1907. J. M. Kelley, machinist, right hand badly crushed in machine shop.

March 19, 1907. Patrick Fahey, blacksmith, hand badly injured. Was deprived of use of hand for a long time.

March 27, 1907. James Campbell, boiler maker, foot badly crushed.

April 18, 1907. C. Lundstedt, boiler maker, elbow and back badly hurt.

June 12, 1907. Michael Fennell, shoulder and side badly hurt. Was unable to report for work for a long time.

- July 13, 1907. J. Fraser, rigger, badly injured in left leg.
- July 18, 1907. E. H. Wight, leg injured.
- July 25, 1907. Peter Johnson, molder, badly injured in foundry, losing three toes of left foot.
- July 25, 1907. B. Danofsky, heavy forger, severely burned about face and hands in boiler shop. Unable to work for long time.
- July 26, 1907. J. Kelson, boiler maker helper, fingers of right hand badly cut.
- July 27, 1907. William Hough, boiler maker, left thumb crushed in boiler shop. Subsequently lose thumb.
- July 31, 1907. Michael Norris, boiler maker, bad accident to right eye. Unable to use same for long time.
- July 31, 1907. Joseph A. Connor, messenger boy, machine shop, left foot badly crushed. Laid up long time.
- August 2, 1907. E. J. Harrington, boiler maker helper, left leg badly crushed.
- August 2, 1907. Daniel Gardner, machinist helper, right hand badly crushed.
- August 9, 1907. Alex. Rose, boiler maker helper, severe wound to left arm.
- August 26, 1907. Timothy Haley, boiler maker, left hand badly wounded.
- August 27, 1907. George W. Butler, machinist, severe injuries to head.
- August 30, 1907. Colin C. Crawford, coppersmith, broken ankle.
- October 1, 1907. M. J. Duran, leading man boiler maker, bad injury to left foot.
- October 14, 1907. George Truckess, boiler maker, injury to back.
- October 18, 1907. William Barry, boiler maker helper, foot badly sprained.
- October 26, 1907. Rupert W. Anderson, pattern maker apprentice, right arm badly cut.
- October 31, 1907. Oscar Weiner, holder on, middle finger left hand crushed.
- November 11, 1907. J. P. White, boiler maker, head badly injured.
- December 14, 1907. William McCarthy, master coppersmith, accident to face; badly cut.
- January 23, 1908. E. J. Shoff, boiler maker, severe injury to right side.
- February 7, 1908. A. J. Porter, machinist, toes crushed.
- February 14, 1908. Timothy J. Buckley, boiler maker, right hand badly crushed.
- February 17, 1908. Thomas Crawford, hand badly injured.
- February 17, 1908. George Martin, quartermen boiler maker, right leg badly injured.
- February 18, 1908. Lawrence Fitzgerald, boiler maker, severe accident to eye.
- February 20, 1908. J. J. Keaney, boiler maker, severe injury to right hand.
- March 7, 1908. Alfred Cannell, machinist helper, hand severely cut.
- May 18, 1901. J. B. Cook, machinist, fell dead while at work.
- February 28, 1902. John Kenney, boilermaker, side and back severely hurt.
- June 9, 1902. Daniel Brennan, holder on, ankle badly wrenched.
- October 10, 1902. John F. Kelley, boilermaker, head and back badly injured.
- November 5, 1902. E. A. Dickson, painter, chest and head badly injured.
- March 18, 1903. Charles H. Dirksmeyer, Charles C. Crowley, coppersmiths, badly burned by explosion of gasoline torch in copper shop.
- March 26, 1903. Alfred Pearson, puncher and shearer, badly burned by a carboy of muriatic acid breaking.
- April 13, 1903. Charles H. Bridges, machinist, badly scalded on neck and hands, through some one opening a valve on the *Ajar*.
- May 27, 1907. H. H. Richardson, engine tender, hand and fingers badly crushed.
- June 20, 1903. John Keaney, boilermaker apprentice, hand badly cut.
- July 29, 1903. J. J. McAuliffe, fireman, dislocation of shoulder.
- August 1, 1903. George H. Hodgson, machinist tool hand, feet badly hurt.
- August 11, 1903. E. F. McCarthy, iron finisher's helper, back injured.
- September 9, 1903. Jeremiah McCarthy, melter, burned on arm and face in foundry by hot metal.
- September 14, 1903. Thomas H. Soutter, boilermaker, right leg badly hurt.
- September 17, 1903. William O'Donnell, machinist, head badly hurt.
- September 29, 1903. Peter Towle, machinist, burned about face and neck.
- October 26, 1903. Gerhard Hedberg, rigger's helper, knee jammed.
- January 20, 1904. Ed. T. Dando, boilermaker, back injured.
- May 31, 1904. William C. MacIntyre, molder, hand jammed.
- July 13, 1904. Thomas O'Neill, blacksmith's helper, thumb jammed to a jelly.
- July 29, 1904. Edward Flynn, boy boiler scaler, head badly injured.
- August 4, 1904. N. O. Gruner, flange turner, severe injury to ankle.
- August 17, 1904. J. A. Black, machinist, arm badly injured.

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October 1, 1904. Hubert Sulkey, iron finisher's helper, struck by flying piece of iron while breaking same for foundry use. He died a few hours after, never having regained his senses. Left a wife and five small children destitute.

November 9, 1904. William Hurley, holder on, bad injuries to right leg and foot.

December 8, 1904. James Miller, boilermaker helper, badly injured all over.

December 13, 1904. Timothy F. Quinn, machinist, left hand jammed badly.

January 12, 1905. Frank Murphy, boilermaker helper, face badly cut by steam hammer.

February 6, 1905. Patrick H. Rooney, machinist helper, fell dead in shop.

February 6, 1905. M. F. McCafferty, iron finisher's helper, side badly hurt.

April 25, 1905. William Duffy, blacksmith helper, arm badly injured.

April 4, 1902. J. M. Fleming, boilermaker, left foot badly injured.

March 28, 1902. M. Hurley, right hand badly crushed.

January 20, 1900. J. E. Magner, both arms badly crushed. Was done up in wire work as result of same. Was never able to do heavy work after and has since died.

June 2, 1905. J. J. Gilliss, rivet heater, badly scalded while at work on *Hist.*

July 15, 1905. John Raines, boilermaker's helper, hip and leg badly injured.

August 22, 1905. R. J. Neagle, rivet heater, foot badly scalded.

September 30, 1905. William Gullfoyle, boilermaker's helper, left foot crushed.

September 30, 1905. George Story, boilermaker, foot and leg badly injured.

Was unable to walk for long time.

September 19, 1905. J. J. Landers, back and legs badly hurt.

October 13, 1905. J. W. Fletcher, machinist, right arm run over by 7-ton crane. Subsequently arm was amputated.

November 3, 1905. G. C. Preble, house joiner, body and hand badly jammed.

November 10, 1905. John Doherty, machinist, hand badly hurt.

December 21, 1905. Thomas O'Keefe, boilermaker's helper, right foot badly injured.

January 8, 1906. William J. Walsh, tinner, right hand torn in rolls.

January 15, 1906. Leslie A. Chapman, rigger, side and back badly injured.

February 21, 1906. Cornelius Powers, rigger, left ankle broken.

March 5, 1906. Thomas Soutter and Jeffrey Moore, boilermakers, both men badly injured in head and body.

May 8, 1906. Thomas E. Casey, rivet heater, hand very badly hurt.

May 18, 1906. Robert Howard, boilermaker, hand badly injured.

July 20, 1906. Matthew Tully, molder's helper, hand badly crushed.

August 13, 1906. E. F. McCarthy, iron finisher's helper, back and side badly hurt.

August 16, 1906. A. W. Cannell, G. W. Odiorne, R. McKeown, J. Mahoney, J. Sweeney, J. Johannesson, W. C. MacIntyre, all molders, very severely burned by the bottom of a loaded crucible dropping out. It was full of hot metal. Men unable to come to work for long time.

September 19, 1906. Walter Burke, boy boiler scaler, severe injury to testicles, being struck with a large spike.

AFTERNOON SESSION.

STATEMENT OF MR. GEORGE L. CAIN.

Mr. ALEXANDER. Where do you live?

Mr. CAIN. I live in Lynn, Mass.

Mr. ALEXANDER. And what relation have you to organized labor?

Mr. CAIN. I have a very peculiar position to organized labor. I belong to an organization, and I have belonged to it twenty-three years, and I am more or less of a leader in organized labor and in the ranks of organized labor.

Mr. ALEXANDER. In what capacity?

Mr. CAIN. Well, I am the president of the national league of the employees of navy-yards, naval stations, arsenals, etc.

Mr. ALEXANDER. We simply wanted to identify you, as to how you were connected with labor in all these navy-yards.

Mr. ROBERTS. I might say also that Mr. Cain is employed in the Boston Navy-Yard.

Mr. CAIN. I am in charge of the instrument room in the department of steam engineering in the Boston Navy-Yard. I have been so long identified with organized labor that it has always been my policy to cater to humanity. With the average man who works for a living, hunger or starvation is only a matter of two weeks away from him when he is out of work, or when his wages cease. I believe that the United States Government should be as liberal toward the men who work for them as employers on the outside are. I belong to the State of Massachusetts, and I am very proud of it in a great many ways, because it gives to the man who works for a wage rate some chance of getting back compensation in the event of accident, and it makes it possible for the widow or orphan in the event of death to receive a certain compensation. I have very carefully followed up the number of accidents that have happened in the Charlestown Navy-Yard. I find in the steam engineering department we have a record of 92.

Mr. ALEXANDER. In what period of time?

Mr. CAIN. Since 1900, up to March 8 we have had 92 accidents, and out of the 92 I think there have been two which were fatal. There have been a great number of serious accidents. I will simply relate to you one, which caused a man's death. I happened to be pretty familiar with him. He was breaking iron in the old-fashioned way. They have ways that come up and a ball of iron attached to it, and that is lifted up, and a man stands off perhaps 100 or 150 feet away, and he pulls the rope which opens up the jaws of the clutch and this big ball of iron comes down and smashes the iron. This man stood off 150 feet from where the ball was, but a piece of iron flew that 150 feet and struck him at the base of the brain, and the brains oozed right out onto his coat, and the man dropped down dead. The reason I mention this is because the workmen in the steam engineering department went around and subscribed a dollar a man, and I think we had at that time 500 men, and we collected \$500, and we found that man's wife pregnant, and his children—there were, I think, four of them—did not have an underdrawer on; they ran around their room in their bare feet. That home was destitute. That man got \$2 a day, and yet the money he received was not capable of protecting his wife and family when he was alive. The Government, when that accident happened, stopped his pay practically on the hour. I do not think that this Government of ours, which we boast of so much, intends that the men who work for them, who give the best that is in them, shall be so unfortunate that their widows and orphans shall suffer after they have left them.

I will relate to you another one. Mr. Fletcher, a man who served this Government of ours in the time when it needed men, at the time of the civil war, came out of the civil war in pretty good condition. Anyhow, he had both his arms and both his legs. He was employed in the steam engineering department, doing some work on the cranes. He happened to be on the run of one of them doing some work, I forget just now what. Somebody came up and pulled the lever of the crane. This was an electric crane. He was working pretty close

to the wheels of it, and when this person pulled the lever, the crane ran over him and took off his right arm at the shoulder, and ran over and smashed his left hand, and he dropped to the floor. I have his testimonials here in his own handwriting, and I would like to have you, Mr. Chairman, look at it. That is a specimen of his handwriting. This man tried, I am led to believe, to have a special act of Congress passed for him. Senator Gallinger, I believe, took the matter up, and I believe it is in his hands at the present time. Now, this is a man who has been to a certain extent up against it. Time after time he has been up against it, and if there is anything that this Government ought to do, it is to protect the men who work for it, such as Mr. Fletcher. We can go right down the list, and we find accident after accident. We find that the iron plates around the engine room or around the boilers have been left open, perhaps by some of the jackies. Those places are dark on board ship, and perhaps some of the men who have been working there a few minutes before, coming back in the dark and not knowing that the plates have been removed and placed to one side leaving a big hole, the plumbers and coppersmiths, or the boiler makers, come down there, and in the dark fall into those places. We have one incident after another where there has been neglect on the part of somebody, but not on the part of the man who had the accident; yet he and his family have got to suffer by reason of the neglect of somebody else in the employ of the Government. I do not think it is hardly fair, and I know it is not right, and I know it is not justice, and I do not think that the Government intends to do these things, but they have gone on year after year. I hope and pray that this committee, even though they may not agree on either one of the three bills that are now in their hands, will agree on some bill and present it to Congress whereby the men who work for the United States Government will have some opportunity of redress.

MR. ALEXANDER. Which one of the three bills do you prefer, the one introduced by Mr. Gillett, the one introduced by Mr. Roberts, or the one introduced by Mr. Sterling?

MR. CAIN. I am in favor of the one introduced by Mr. Sterling. The organization which I belong to has indorsed, first, Mr. Gillett's bill. Then they indorse Mr. Roberts's bill, and then one of the last ones came, and it was so entirely different from the others, there were a great many features in it that they thought they ought to have, so that they indorsed that also.

MR. ALEXANDER. Would your people object if the bill was reported limiting it to hazardous operations?

MR. CAIN. Personally I do not believe they would. I believe that they think—

MR. ALEXANDER. That is enough; you have answered it fully enough. You may enlarge as much as you want to, but you have answered the question sufficiently, unless you wish to enlarge on it.

MR. CAIN. No; not unless you wish me to.

MR. ALEXANDER. No.

MR. CAIN. We have another man by the name of Fitzgerald who worked in the equipment department, a chain maker. There was a man that I walked in with the very morning the accident happened. To show you that the man was in good physical health, he and I ran practically a foot race coming in, and he jumped over a 4 foot

bar, and he went to work that morning in the very best of health. Before the day was half over, working on the furnace which was placed very close up against the wall, there was a place I judge about a foot and a half between the furnace and the wall, and back of the furnace was a window, and the pipes that led the naphtha up ran right along the wall, and the valve that runs up and connects to allow the naphtha to go into the furnace had something wrong with it. This valve started to leak with the fire on, and iron inside heating, and he went over to shut off the valve, thinking he would stop the leak, but instead of shutting it off and stopping the leak, the valve stuck going down on to the seat of it, and the pressure was greater, and it squirted oil all over him. In a minute he was all afire, and he started to go around by the window, but was unable to open it, and then he returned and went around by the furnace, and was ablaze all over, and the men helped to run him over to the sand heap, and they threw him down in it and it took six men to hold that man, and he was simply delirious. He said, "Let me up; there is nothing the matter with me." In two days from that time that man was sent to his long home. I believe Mr. Roberts has an account of that particular case, and he can give you a much better illustration, outside of the accident that happened, than I can.

Mr. ALEXANDER. I do not think you need to dwell on the fact that these accidents are just as heartrending when they occur in a Government factory as when they occur elsewhere. The accidents are about all alike, and unless you have two or three special cases that you wish to bring our attention to particularly, I would not take the time to go over any others.

Mr. CAIN. I will admit, sir, that those are the only things that I have got to impress the committee with.

Mr. ALEXANDER. There is no question at all that the men in the employ of the Government, when they are hurt are hurt just as badly, and their families need help just as much, as if they were employed by a private firm. There is no question about that.

Mr. CAIN. I wish to state that in the last ten years, from 1896 to 1906, there were 747 cases which were reported in the Charlestown Navy-Yard, and they have them on record there. I tried to find out how many had happened from 1906, in the month of July, I believe it was, up to this time—that is, during the last eighteen months—but I was not able to find that out on account of their adopting a new card system, and with that they would have to go over the individual men. We have at the present time about 1,900 men in the Charlestown Navy-Yard, and they would have to go over the individual records in order to find out who was hurt and who was not hurt; and I made an approximate estimate on going around among the men in the navy-yard, and I found there would be an average of 350 or 400 for the eighteen months. The accidents at the present time have been increasing down there, because we have far more men, and we have more ships coming in, and I find that since the first of the year 1908, counting the matter of sixty-six working days, we have had 116 accidents, and in the case of 27 of those accidents the men have been compelled to go home, not being able to attend to their work. Many of them have not even reported for work up to the present time, or had not when I left home Saturday night. I want to give all due credit to Admiral Swift, who is commandant of the

yard now. He has inaugurated a system and put the dispensary under orders in our yard that they must keep a correct record of the accidents that happen.

Mr. ALEXANDER. Can you classify those 116 accidents, as to how they occurred or what their character was?

Mr. CAIN. I could have done that if I had been aware that you really desired that. I could have gotten that record.

Mr. ALEXANDER. Perhaps you had better send it to Mr. Roberts or to Mr. Gillett.

Mr. CAIN. I would suggest that it would be a good thing for Mr. Roberts to write to the admiral of the yard. I tried to get a record complete, and the admiral told me it would have to be by an order of the Secretary of the Navy, as it would consume quite a large amount of time.

Mr. ALEXANDER. I have no doubt Mr. Roberts can attend to that.

Mr. CAIN. I think it can be arranged.

Mr. ALEXANDER. I think the committee would like to have it.

Mr. ROBERTS. If you will pardon me, Mr. Cain has there a memorandum of a great many accidents, which he will submit, giving the names of the men and the dates of the accidents and the nature of the accidents.

Mr. ALEXANDER. That can be printed in the record.

Mr. ROBERTS. There is no need of reading each one, but he has a great many there which he has gathered together. I think it is desirable to have that, and your committee might write a letter to the Secretary of War and to the Secretary of the Navy, because those Departments employ most of the employees who are civilians, and get a statement of accidents for any given period of time back. My idea is that it would not help you a great deal for me to find out how many happened in one navy-yard when we have a dozen navy-yards in the country, or how many happened in one arsenal when we have six or seven arsenals; but from the Secretary of War and the Secretary of the Navy we would get it all.

Mr. ALEXANDER. I think Chairman Jenkins would be very glad to do that.

Mr. CAIN. I might mention another accident that happened to a man by the name of Crawford. I spoke about boiler plates being removed from the floor in dark places on board ships. He at the present time has to walk with a stick, four months after the accident happened. He was out about three months, and was unable to do any work at all, and when I left there he gave me this statement and asked me to present it. I told him I would be only too willing if the committee would accept it.

I think in the case of accidents like those, which come to men who work for the United States Government, the Government should give some protection. Other than that I have nothing to say, because any argument I might submit would be all along the line of these things that I have already mentioned.

Mr. ALEXANDER. We will accept those without your reading them.

Mr. CAIN. Time and time again men working in the boiler shop will have chippings at a distance fly and strike them. I have known chips to fly 30 feet when they have automatic hammers at work, and I have known a number of men to lose their eyesight. We have in the Boston Navy-Yard six or eight men who have lost their eyesight

in that work, and I think those are the kind of accidents that ought to receive protection from Uncle Sam.

Mr. ALEXANDER. We are very glad to have heard you.

Mr. CAIN. There is just one thing I really forgot. A man by the name of Smith, who lives down in Revere, had been working in the anchor shop. They had been building a furnace, and he went down in a corner to get brick to build the furnace and there was a tub down there of hot water with steam running in at the bottom, and one of his feet went into it clean up to the knee. That man has not been able to walk on his foot since that accident, except with the aid of a cane.

Mr. ALEXANDER. Did he not know that that water was hot?

Mr. CAIN. Yes; but this was uncovered, and he fell into it. It was not through any fault of his. Those tubs or barrels, as a rule, are built up a matter of a foot and a half high from the floor, but this one happened to be for special work, I believe, and had no protection whatsoever. There was not even a rail around it, as ordinarily there is when they are down on the floor, and this man's foot went down into it in that dark corner. This occurred November 15, 1902, and at this time that man is a cripple, his leg is all withered, and with scales on it just like a fish; it was burned right in to the bone. He has to walk with the assistance of a stick. There is a man who has been discharged a number of times. They have taken him back, and he is unable to do work he has been in the habit of doing, and they have even reduced his pay. Those are things that the men who work for the United States Government have to contend with. If they come back after they are hurt, as a rule their pay is reduced, because they are unable to do the work that they have been in the habit of doing before the accident. This is the gratitude that is shown them. Mr. Chairman and gentlemen, I thank you.

Mr. ROBERTS. Mr. Chairman, I understood you a while ago to say that the committee met this afternoon for the sole purpose of hearing Mr. Cain.

Mr. ALEXANDER. Yes, sir.

Mr. ROBERTS. Might I beg the indulgence of the committee to hear what little I have to say? I am pretty busy.

Mr. ALEXANDER. I want you to consent to defer what you have to say until Mr. Sterling is here, and then Mr. Sterling and Mr. Gillett can hear you. Mr. Sterling is chairman of the subcommittee to which your bill and his own bill are referred.

Mr. ROBERTS. If I understood correctly, those bills were all referred to the full committee.

Mr. ALEXANDER. No; they are being considered by a subcommittee. They must be worked out by a subcommittee and reported to the full committee.

Mr. ROBERTS. My suggestion would be, as long as this is all being taken in shorthand and will be in print before the subcommittee and the full committee, that you might just as well let me make whatever statement I have now as later.

Mr. ALEXANDER. I want Mr. Sterling to be here.

Mr. ROBERTS. Of course I will defer to your wish.

STATEMENT OF MR. ARTHUR E. HOLDER, OF WASHINGTON, D. C.

Mr. ALEXANDER. Where are you employed?

Mr. HOLDER. I am employed by the American Federation of Labor as its legislative committeeman. I am a machinist by occupation. I have never worked for the Government. I have been a member of organized labor since 1880. I do not know whether you want all of that in the record or not.

Mr. ALEXANDER. We are very glad of it. Now we will hear you.

Mr. HOLDER. I am not going to take the time of the committee to-day to plead with you for sympathy. I am not going to attempt to impress upon you the need of this legislation for the simple reason that I believe you are a unit upon that point.

Mr. ALEXANDER. Let me ask you one question right there.

Mr. HOLDER. Yes.

Mr. ALEXANDER. Which bill do you favor, Mr. Gillett's bill, Mr. Roberts's bill, or Mr. Sterling's bill?

Mr. HOLDER. Mr. Sterling's bill, sir.

Mr. ALEXANDER. Would you be willing to have the Sterling bill limited to hazardous employment only?

Mr. HOLDER. I would not like to reply to that definitely, at once, Mr. Alexander, because some conflicting thoughts run through my mind as you ask the question, and since you asked it of Mr. Cain. I am thinking of the boys who work for Uncle Sam upon the railway cars as railway mail clerks. That is a hazardous occupation.

Mr. ALEXANDER. Well, they are all taken care of now.

Mr. HOLDER. How?

Mr. ALEXANDER. The same as anyone else in the employ of the company. If they are injured they can recover from the company.

Mr. HOLDER. Yes; but they have to sue. They have to prove their cause of action.

Mr. ALEXANDER. They would have to under the Sterling bill.

Mr. HOLDER. No, sir; excuse me, they would not.

Mr. ALEXANDER. That is a matter of detail, you know.

Mr. HOLDER. Yes; and that is one of the reasons that this bill has been drafted in the way that it has, in order that the automatic compensation should be given to Uncle Sam's employees, either in case of death or in case of serious accident. You will observe by a careful reading of this bill that there is no provision for trifling accidents, breaking of fingers or spraining of ankles, or any such incidental small accidents as those. There is no opportunity under the provisions of Mr. Sterling's bill for an employee who has a disposition to take advantage of the Government in any way, shape, or form to be able to get it.

This bill calls for close and accurate statistical information to be able to provide you gentlemen who may sit in Congress in future, or your successors in Congress, with information, so that you may know exactly what happens in the Government workshops, or among all of the employees of the Government, to-day. You are in a daze. You do not know. None of us know. Mr. Cain has given us more to-day than has ever been collected before, and it is only owing to his constant industry and watchful observation in the locality in which he works that he is able to provide us with as much as he has. The Government officials themselves, in the local yards, will decline to

give that information to any average inquirer, and it is possible, and more than probable, that they would hesitate to even give it to a Congressman unless he showed some insistence. This bill would call for accurate statistics, for a perfect record of every case, slight or serious. The people I represent, Mr. Chairman, in short, pray for the enactment of the Sterling bill's principle. We do not stand for the phraseology strictly, but for the principle that is involved. The words "civilian employees" are intended to cover practically all classes of men working for the Government, absolutely in line with the thought that prompted your question this morning to Mr. Adams, that if some Government clerks were traveling down in an elevator in a Government department building, and an accident happened by which those clerks were injured or lost their lives, even though not actually engaged in a hazardous occupation, they should be given the right of recovery of compensation for injury through the accident that happened. We see the surfmen, the men who risk their health and their lives, and I do not think that any provision has ever been made for light-house men and surfmen; and I do not think there is a living man in the Government service or out who knows the number of men who lose their lives annually trying to save the lives of others. They are not members of any labor organization, but we, in our foresight, try to take in all, if we possibly can, so that there will be no distinction. There have been some exceptions taken this morning to the limitation of \$2,500. We are perfectly willing to have that withdrawn. We had that inserted because of the fear that there might be some objection made that because men were obtaining high salaries it would not be necessary to give them compensation in case of accident or death.

Mr. DIEKEMA. That is not the theory. The theory is this: If a man earns sufficient money to keep himself protected by insurance as he goes along, then he can look after himself; whereas if a man does not earn enough to keep himself protected by insurance, then he should be protected by the Government. That is it.

Mr. HOLDER. You have covered it very clearly. At the same time we ask for Government protection, while still maintaining the individual's right to protect himself.

Mr. DIEKEMA. And his duty to do it.

Mr. HOLDER. And his duty. I do not know whether I ought to touch upon this, but yet I think I should, for the sake of correcting the record. One of the gentlemen who addressed the committee this morning was unfortunately misinformed with regard to the situation in the Washington Navy-Yard, and I regret that he is not here now.

Mr. ALEXANDER. Mr. Adams, you mean?

Mr. HOLDER. No; not Mr. Adams. It was one of the members of the committee; Judge Clayton. I think.

Mr. ALEXANDER. What is the point you want to speak of? Do you want to correct his statement with regard to some of those men making \$15 a day?

Mr. HOLDER. Yes; we do not want the impression to go out to the world that there are any mechanics in the Washington Navy-Yard who have yet reached the point of being able to make \$15 a day.

Mr. ALEXANDER. If you know what those men are paid for the skilled labor on that part of the gun that Judge Clayton spoke of, put that in the record.

Mr. HOLDER. Yes, sir. The first-class men get \$3.76 per day; the special-rate men get \$4 per day, and the leading hands get \$4.16 per day.

Mr. HOLDER. I want to say that we have in this room to-day some of the most expert mechanics upon ordnance that the world has ever known, and they do not receive over \$4.16 a day; and these men can do anything, from splitting up an inch to a millionth part and being positive about its accuracy, to being able also to fire the gun, if necessary, after they have built it; and we wish they did make \$15 a day. We do not think they would make a cent too much. Mr. Chairman, I do not think that I want to say anything more. I think that I have covered practically every point but one, and this is what has annoyed me ever since I first saw a draft of the bill. There is no provision in this bill for the employees of the District government, and we understand that it is not possible to include them in a bill of this general character, and we think that they ought to be given sufficient care and protection.

Mr. ALEXANDER. What persons does your bill include?

Mr. HOLDER. Our bill includes the civilian employees, including as well those employed under the Isthmian Canal Commission and by the Panama Railroad and steamship lines. It does not even include the insular possessions. You could include the insular possessions in this bill, but from some technical phrases or some method that you have in drafting bills, we can not include protection for employees of the District of Columbia in a bill of this character, and that is the reason I call your attention to it now, hoping that if you give us legislation of this character you will also be kind enough to put in a separate bill for the people employed in the District.

Mr. ALEXANDER. You have referred to the employees of the District of Columbia as distinct from the employees of the United States Government in the District of Columbia.

Mr. HOLDER. Yes, sir; and if you will bear that in mind, to furnish some provisions that will protect those people, we will very greatly appreciate it.

Mr. ROBERTS. You would want it also to include the civilian employees in the Territories, would you not?

Mr. HOLDER. Yes, sir; if you agree to go that far.

Mr. ROBERTS. There is no reason why you should include the civilian employees in the District of Columbia and exclude those in New Mexico or any other Territory.

Mr. HOLDER. Not in the least. We were only afraid of including too much, but if you feel in your hearts that you can make one clean sweep of this, and give us the legislation that is being asked for from the heads of the Departments, and is now being crystallized into the different bills that have been presented in the Sixtieth Congress, we shall greatly appreciate it.

Mr. ALEXANDER. You try your hand at framing an amendment to the Sterling bill which will limit its operation to hazardous employment. Sometimes, you know, to get a thing started it is better to take a quarter of a loaf than to attempt to get a full loaf and get nothing. This is a new thing for the United States. As we were told this morning by Commissioner Neill, all the European governments have it, but it is entirely new in this country. It is in that respect so novel as to be revolutionary.

Mr. HOLDER. Yes.

Mr. ALEXANDER. Sometimes it is better to start, you know, with a little and then find out how it works, and if it works all right increase it.

Mr. HOLDER. Yes. Well, there has not been as much attention paid to this matter in this country as there has been in New Zealand, Australia, the Cape of Good Hope, or Canada. This bill has been Americanized as nearly as possible, following that general principle, and I believe that it would be worth while for you to hear again the remarks passed upon this subject by our President.

Mr. ALEXANDER. You mean by Mr. Gompers?

Mr. HOLDER. No, sir; by President Roosevelt.

Mr. ALEXANDER. I thought you referred to your organization, the Federation of Labor.

Mr. HOLDER. No, sir; I mean the President of the United States.

Mr. ALEXANDER. This can be incorporated in the hearing.

Mr. HOLDER. It is barely possible that some thoughts which he expressed in his own inimitable way were not thoroughly apprehended at the time; but there was one significant feature in which he at least implied, if he did not as much as directly say, that he would not approve of a bill that was drafted for the purpose of suing the United States Government in courts. I think that was in his message in January.

Mr. ALEXANDER. Have you that message there?

Mr. HOLDER. Yes, sir.

Mr. ALEXANDER. You need not read it, but make it a part of your remarks and let it go in.

Mr. HOLDER. I thought it was advisable to at least call the attention of the committee to this to-day, so that there would not be any misapprehension in regard to that point. This is not very lengthy; it is, in fact, very short. The President says:

I also very urgently advise that a comprehensive act be passed providing for compensation by the Government to all employees injured in the Government service. Under the present law an injured workman in the employment of the Government has no remedy and the entire burden of the accident falls on the helpless man, his wife, and his young children. This is an outrage. It is a matter of humiliation to the nation that there should not be on our statute books provision to meet and partially to atone for cruel misfortune when it comes upon a man through no fault of his own while faithfully serving the public. In no other prominent industrial country in the world could such gross injustice occur, for almost all civilized nations have enacted legislation embodying the complete recognition of the principle which places the entire trade risk for industrial accidents (excluding, of course, accidents due to willful misconduct by the employee) on the industry as represented by the employer, which in this case is the Government. In all these countries the principle applies to the Government just as much as to the private employer. Under no circumstances should the injured employee or his surviving dependents be required to bring suit against the Government, nor should there be the requirement that in order to insure recovery negligence in some form on the part of the Government should be shown. Our proposition is not to confer a right of action upon the Government employee, but to secure him suitable provision against injuries received in the course of his employment.

Then it follows along for a few sentences, but I will not read further.

Mr. ALEXANDER. Is that all?

Mr. HOLDER. That is all, sir, that I desire to say.

Mr. ROBERTS. I have not anything further, unless you want to hear me now.

STATEMENT OF MR. H. T. LECLAIRE.

Mr. ALEXANDER. What is your post-office address?

Mr. LECLAIRE. Washington, D. C.

Mr. ALEXANDER. You work in the navy-yard?

Mr. LECLAIRE. Yes; in the navy-yard. I have been employed down there for the last ten years.

Mr. ALEXANDER. What is your particular duty there?

Mr. LECLAIRE. I hold the position of leading man down there at the present time; just a grade above the first-class machinist.

Mr. DIEKEMA. We are now listening to one of the experts.

Mr. ALEXANDER. So I understand.

Mr. LECLAIRE. I am not particularly expert. Looking over the three bills which are before this committee, the Sterling bill, to my mind, meets the requirements of the employees perhaps closer than the others. My main reason for thinking so is because it would not be necessary for the injured party to go before the courts and prove his case on account of the fact that it puts it up to the Secretary of Commerce and Labor to do so. Otherwise it covers all the good points of the other two bills. As far as accidents are concerned, with regard to the Washington Navy-Yard, I would say that to my knowledge there have not been a great many accidents, in fact less accidents there than in any plant of a like character that I have been employed in, and I have worked in quite a number of the large machine shops throughout the country. The percentage of accidents down there is quite small. I can not recall at the present time but two deaths, one of which occurred last summer and one three or four years ago, caused by a man who was repairing a crane falling off and killing himself in that way.

I did not come up here with the intention of having anything to say.

Mr. ALEXANDER. We are very glad to hear you. How much do you get a day?

Mr. LECLAIRE. My salary is \$4.16. That is the highest rate of pay paid a skilled man down there, outside of the supervising force, \$4 a day; and that has been practically discontinued, now, within the past three months. There was a rating down there of \$4, covering special-rate men, as they call them. They were supposed to be extra-skilled men, and particularly skilled in their particular line. They got \$4, but they have been cut down to \$3.76. The highest rate paid to anyone there is the rate paid to the master mechanics, which is \$6.52 a day, and there is one of those men at each shop. The quartermaster's rate is \$4.52, and, as I say, the leading man gets \$4.16.

Mr. ROBERTS. May I ask Mr. Leclaire if that is within his knowledge the highest pay that any master mechanic receives in any yard of the country?

Mr. LECLAIRE. I think the highest rate paid to any master mechanic is in Brooklyn.

Mr. ROBERTS. Do you know what that is?

Mr. LECLAIRE. It is \$7. That is the highest rate, to the best of my knowledge.

Mr. CAIN. It is \$9.

Mr. LECLAIRE. Is it \$9? I do not know much about the rates outside of Washington.

Mr. ALEXANDER. What is the largest gun which has been manufactured here?

Mr. LECLAIRE. The 13-inch gun.

Mr. ALEXANDER. How large is that?

Mr. LECLAIRE. The 13-inch gun is 40 caliber; that means that it is 40 times the diameter in the length of the bore, which would make it in the neighborhood of 45 feet.

Mr. ALEXANDER. How far will that gun carry?

Mr. LECLAIRE. It is estimated that the 40-caliber gun will carry about 1 mile for each inch of diameter, which would be about 13 miles.

Mr. ALEXANDER. One mile for each inch of diameter?

Mr. LECLAIRE. Yes; but I do not suppose it would be actually effective at that distance. The 12-inch gun, which is the most effective of the large ordnance, and is practically in use on all the large ships, is 45 caliber. That is more effective at a long distance than the old 13-inch caliber gun. That is 45 feet long.

Mr. ALEXANDER. We are very much obliged to you. Those questions were not germane, but that is mighty interesting.

Mr. LECLAIRE. I am more familiar with that than with lots of other things.

Mr. ROBERTS. There is one other man present, Mr. Brown, who has come up here with the other employees, and I would suggest that he might be heard.

Mr. ALEXANDER. We will hear Mr. Brown.

Mr. ROBERTS. Then you will have heard all of those who are present.

STATEMENT OF MR. WILLIAM F. BROWN.

Mr. ALEXANDER. What is your address?

Mr. BROWN. No. 250 Eighth street SE.

Mr. ALEXANDER. Where are you employed?

Mr. BROWN. At the Washington Navy-Yard.

Mr. ALEXANDER. What is your duty there?

Mr. BROWN. I am a first-class mechanic and machinist.

Mr. ALEXANDER. What do you get a day?

Mr. BROWN. Three dollars and seventy-six cents a day.

Mr. ALEXANDER. Now just make any statement you desire to make.

Mr. BROWN. I had the honor to go into the Washington Navy-Yard, I think it was in about 1878, to learn my trade. I have been there off and on ever since, and I have heard these statements made here to-day about these expert mechanics, but I look around and I do not think we have any expert mechanics. I think they all look alike down there. While it is true that some men are very apt in certain work—of course that is true—the system down there as I know it is that one first-class mechanic takes up any job that a master mechanic is supposed to give him. I might tell you the reason I am so much interested in the liability bill. My father happened to be killed in the Washington Navy-Yard, and I happened to be hurt there.

Mr. ALEXANDER. At the same time?

Mr. BROWN. No sir; my father was killed there in 1864. I happened to be hurt, ruptured. I had to jump off of a big machine.

I was turning a trunnion, you might call it, for an 18-inch gun, and in the hoisting I had to get in between in a very narrow place, and the machine came around near the hoisting, and I either had to jump off or it would have cut me in half; of course I had to throw myself back, and in that manner I ruptured myself. Of course that put me to inconvenience. I let it run on for nearly four or five years, and three years ago I went to the hospital on the 1st day of October, and I did not get back to work any more until the 15th day of January. Accidents of that kind occurring and the Government giving mechanics no compensation for them, we are all interested, and hope that this committee will come together on some kind of a bill that you will draw up which will give the men relief. I do not know that there is anything more that I could say. I came up here to-day only in the interest of this bill.

Mr. ALEXANDER. We are very glad to have heard from you. I think, gentlemen, this will have to end the hearing, if it is agreeable to Mr. Roberts that we go over until Mr. Sterling can be present.

(At 3.30 o'clock p. m. the subcommittee adjourned.)

STATEMENT OF HON. ERNEST W. ROBERTS, A REPRESENTATIVE FROM MASSACHUSETTS.

Mr. ROBERTS. Mr. Chairman and gentlemen, I appear before the committee to speak in behalf of bill H. R. No. 14265, introduced by me on the 17th of January last. I introduced on December 2, 1907, another bill, the House bill No. 444, which was drawn upon the same lines. The bill H. R. No. 14265 contains some provisions that did not appear in the first bill, and if the committee ever reach the stage of considering any bill introduced by me on the subject of compensation for employees of the Government, I would ask them to consider the bill H. R. No. 14265 rather than the bill H. R. No. 444.

I want to say at the outset, Mr. Chairman, that I am not here in opposition to any other bill introduced by any other person on the lines of a governmental liability bill. There are two features, perhaps, in all the bills. Mr. Sterling has a bill here which it would not seem to me would come under the heading of a liability bill. Rather, I should call it an accident insurance bill. Mr. Gillett has a bill before the committee that I think is a liability bill, based upon the same lines as mine. I want to say further that I have no pride of authorship in any bill that is before the committee, my object being wholly and solely to provide some means of relief for employees of the Government who are injured without their fault in the course of their regular employment.

I take it that the committee do not now want to hear anything about the hardships that are brought about because of the lack of such a law.

Mr. ALEXANDER. We have had enough of that from gentlemen who have spoken from personal knowledge.

Mr. ROBERTS. I had a very distressing case brought to my attention a year or two ago from my own district, where they wished me to introduce a bill for the relief of the widow and children, and I introduced a special bill; but you gentlemen know that such bills never get action here.

Mr. STERLING. To what committee did it go?

Mr. ROBERTS. I do not recall, but I think before the Committee on Claims.

Mr. STERLING. Has Congress ever made any appropriations for personal injuries?

Mr. ROBERTS. So far as I know, they have not. This case was a most distressing one. The husband was killed by the explosion of a flask of molten iron, or something of that sort. He left a widow with five little children, and the mother was about to be confined. The oldest of the children was only 7 or 8 years of age. I merely mention that as one of the instances of the many hardships that occur, to show that some sort of legislation should be had in order to give relief in these meritorious cases.

Now, the matter came particularly to my attention as a member of the Committee on Naval Affairs. Two Secretaries of the Navy, Secretaries Moody and Bonaparte, have recommended to our committee that we introduce and report a bill granting relief through the courts to employees of the Government in the Navy Department; but it seems to me that that was too narrow a bill. If it was a good policy to afford relief to employees in the navy-yards and arsenals, it was certainly as meritorious that all employees of the Government should come under the provisions of such a law; and, accordingly, taking as a basis that bill recommended by Secretary Bonaparte, a form of which he sent to our committee, I have enlarged it, and then with the suggestions of certain representatives of labor I have added to that a section or two, which I will point out to the committee a little later.

My bill as it now stands covers all the civil employees. I think the vital differences between the bill which I have introduced and that of Mr. Gillett are, first, that he allows a maximum compensation of \$5,000 both for death and injury, while my bill provides \$4,000 as the maximum for injury and a maximum of \$5,000 for death, and a minimum of \$500. Then I have added a section to my bill, and I got that idea, I will say frankly, from the form submitted by Secretary Bonaparte, in which I make provision that the Secretaries of the different Departments may compromise claims. Perhaps it would be as well to put that section into the record, and to that end I will read it:

Sec. 5. That the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Attorney-General, the Postmaster-General, the Secretary of the Navy, the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce and Labor may adjust by compromise all claims covered by this act arising in their respective Departments when, in meritorious cases, such settlement is deemed by them to be for the public interest.

The idea of that section is to prevent in a great majority of cases a resort to the courts. Unquestionably the different Secretaries would carry out the spirit of such a law as well as its letter, and would seek to do justice to those injured, and save the Government the expense and annoyance of suits by compromising as many of these claims as possible.

Mr. ALEXANDER. That really leads up to the Sterling bill.

Mr. ROBERTS. Yes, in a way; but the Sterling bill provides, as I recollect it, that the Secretary of the Department of Commerce and Labor shall have jurisdiction of all the accidents arising in any of the Departments.

Mr. ALEXANDER. Why should he not have jurisdiction under that section?

Mr. ROBERTS. If it is thought advisable, you might make some one Cabinet officer the arbiter of all accident cases.

Mr. ALEXANDER. That is what the Sterling bill does.

Mr. ROBERTS. This is on the compromise, the settlement. It seems to me when an accident happens in a navy-yard the Secretary of the Navy will be in a better position to get at the real merits and equities of that case and be in a better position to make a settlement without suit than, for instance, the Secretary of War or the Secretary of Commerce and Labor, or the Secretary of any other Department, because the Secretary of the Navy would have all the machinery right at hand for ascertaining what the facts were, and that reason would apply to all the Departments.

Mr. STERLING. Don't you think it would be more economical for the Government to have a law on the compensation idea, rather than along the lines of your bill?

Mr. ROBERTS. If Mr. Sterling will pardon me, I do not know that I want to enter a discussion of that feature. Of course, the compensation act, to which Mr. Sterling refers, is an innovation in this country. I understand, and understood from the hearings the other day, the last time we were here, that there are provisions of law in other countries along that line really insuring the employees of the government against accident. A governmental employees' liability bill is an innovation in this country, and it would seem to me, as I look at the matter now, to be quite a long step toward the relief of governmental employees who are injured if we extended the provisions of law substantially to those men that now prevail with regard to employees of private concerns, giving them an opportunity either to compromise or to bring suit and recover something if they can not effect a compromise.

Mr. REID. Your bill goes further than that, Mr. Roberts, does it not, in fixing the minimum amount in any event?

Mr. ROBERTS. There is some limited liability.

Mr. REID. It limits the question of negligence on the part of the employee.

Mr. ROBERTS. My bill does not.

Mr. STERLING. It fixes the minimum amount of \$500 in any event.

Mr. ROBERTS. Oh, no. If the members of the committee have my bill before them they will see. I will read it:

That whenever personal injury is caused to any laborer, mechanic, or other civilian employee of the Government of the United States, while engaged in his regular work or in the performance of any duty to which he has been assigned by proper authority, by reason of any defect in the condition of the ways, works, or machinery, the property of or under the control of the United States, which arose from or had not been discovered or remedied owing to the negligence of any person in the service of the Government.

There is negligence. There must be negligence on the part of somebody connected with the Government who should have seen about that.

Mr. STERLING. Suppose the injured party is negligent?

Mr. ROBERTS (reads):

Which arose from or had not been discovered or remedied owing to the negligence of any person in the service of the Government intrusted with the duty of seeing that such ways, works, or machinery were in proper condition, or by

reason of the negligence of any person in the service of the United States intrusted with and exercising superintendence, or by reason of the negligence of any person in the service of the United States who has charge or control of any signal, switch, engine, or machinery of any kind, the employee so injured, or, in case the injury results in death, the widow or next of kin as hereinafter provided, shall have a right of action in any United States court having jurisdiction over like cases arising between individuals for the recovery from the United States of compensation for such injuries or death.

Sec. 2. That when an employee is instantly killed or dies without conscious suffering as a result of injuries received under the circumstances recited in section one of this act, the widow of the deceased, or, in case there be no widow, the next of kin, provided that such next of kin were at the time of the death of such employee dependent upon his wages for support, may maintain an action for damages therefor and may recover to the same extent as if the death of the deceased had not been instantaneous or as if the deceased had consciously suffered.

Sec. 3. That compensation for death or injury under the provisions of this act shall not be allowed in any case where the employee injured was not himself at the time in the exercise of due care and diligence, or where such employee knew of the defect or negligence which caused the injury and failed within a reasonable time to give or cause to be given information thereof to some person in the service of the United States superior to himself and intrusted with some general superintendence; nor shall any action for the recovery of compensation for injury or death under this act be maintained unless the person injured, or his widow or next of kin, shall, within sixty days of the injury, file with the United States attorney of the district in which the injury occurred a written notice setting forth the time, place, and cause of said injury, and commence said action within one year from the occurrence of the accident causing such injury or death.

Then comes section 4, fixing the amount that can be recovered. Then section 5, providing for a compromise within the limits of section 4.

Mr. MOON. Won't you read section 5?

Mr. ROBERTS. I did read it. That was framed on the section of the Secretary's bill providing that the Secretary of the Navy could compromise in claims under the law. He drew that up to apply only to the Navy Department. You understand, of course, when you bring this entire subject-matter before this committee and provide for all the Departments you would have to provide that all the Secretaries shall have this power.

Then as to the next section, which was suggested by representatives of labor, they said that if it became a law it would not help them very much. They thought if they were injured and brought suit against the Government and got a verdict they would simply then have a claim against the Government, and they would then have to come to Congress and press the claim. Now every Member of Congress know what it is to get a claim through, however meritorious. It means delay at best. It may mean many years of delay before it can be gotten into an appropriation bill, and before the parties receive compensation. Now, to cure that I put this section in, after conference with the representatives of labor and conference with the Comptroller. I went to him and asked him if, under the terms of this bill, an injured employee could go to him and get his money, and he said "No, except in the form of a claim which had been passed through Congress." The language I have here was drafted by him. Section 6 provides—

That the Secretary of the Treasury is hereby authorized and directed to pay any final judgments or compromises of claims arising under the terms of this act; and a sum sufficient to pay any such judgments or compromise awards

is hereby appropriated out of any money in the Treasury not otherwise appropriated.

The Comptroller advises me that under that form of language any and all final judgments or compromises that may have been agreed to between the parties and the different heads of Departments can be paid as soon as the final adjudication or agreement has been made, without any other form of appropriation or any other action by Congress; and I would urge strongly on the committee, if they report any form of bill, that that language, or that substantially that language, be added, so that when an injury has occurred and the damages have been ascertained, either by suit or agreement, that shall be the end of it and the party shall get his money speedily. I am not certain if that would not be very necessary, even if the committee reported Mr. Sterling's bill; otherwise I can foresee, if Mr. Sterling's bill becomes a law—although I have not read it—that these adjudications of the Secretary of Commerce and Labor would simply be claims, and the parties would then have to come up here and press their claims in order to get appropriations for them. So that whatever bill the committee may see fit to report, I would urge that they consider that section of my bill, or similar language, and add it to the bill which they report, in order to make the bill effective. I am certain that the bill of Mr. Gillett and my bill would not in any way nearly accomplish what both of us have in mind unless that language be added to them, because the taking of a claim against the Government on account of an accident and the turning of it into a claim before Congress is almost in effect giving the people a stone in a case where they ask for bread.

Mr. MOON. I recall a good many instances in which people are waiting for their money now after adjudication.

Mr. ROBERTS. Now I will be glad to answer any questions that any members of the committee would like to ask.

Mr. ALEXANDER. Mr. Dawson, will you follow? If there are no questions to Mr. Roberts, you may proceed.

STATEMENT OF HON. ALBERT F. DAWSON, A REPRESENTATIVE FROM IOWA.

Mr. DAWSON. Mr. Chairman and gentlemen, I ought, perhaps, to preface my remarks by saying that I am not a lawyer, and many times I have been thankful that I am not, and therefore I am not competent to discuss this question from the legal standpoint. But I would like to give the committee a little of the result of my personal observations that I have had in cases of this kind.

What I want to impress upon the committee most is the urgent necessity of doing something along this line. Here we have a great class of employees in the United States who are absolutely and utterly without any recourse in cases of this kind. You are all familiar with how futile, I might say, it is to secure action upon claims presented in the form of bills in the House. As I understand it, the Committee on Claims at the present time has taken this stand, that they decline to consider any personal damage cases until Congress has acted upon the general question of a governmental liability law. I happened to have one or two cases of that kind, and—

Mr. ALEXANDER. Do you speak ex cathedra on that, Mr. Dawson?

Mr. DAWSON. That is information given to me by the chairman of the Committee on Claims when I inquired with regard to a bill which I have before that committee of this character.

Mr. ALEXANDER. That is a very good point, and I am glad you brought it out.

Mr. STERLING. The chairman of what committee?

Mr. DAWSON. The Committee on Claims. I think it might interest this committee if I gave them a little information about a particular case in which I was interested, not only as regards the difficulty of securing action by Congress, but also with regard to the point that was raised the other day in the hearings as to limiting this liability law to men engaged in hazardous occupations. The case I have in mind is the case of a man named Severus Hartman, who was employed in the Rock Island Arsenal, who was engaged as a wood worker in that institution, and was working in a very large room with other men, in which was situated a great amount of molding machinery. A knife from one of those great machines flew off the machine and flew across the room 86 feet and struck off Mr. Hartman's arm just as clean as if it was done by an ax.

Mr. ALEXANDER. Would you regard his employment as hazardous?

Mr. DAWSON. No. He was at work upon a bench as a carpenter. He was not employed in connection with this molding machinery at all. Those machines were in another part of the room in which he was engaged, yet without any fault of his own his arm was stricken off. The case was examined by the War Department through official channels; those facts were ascertained and established, and those facts were submitted to the Committee on Claims; and yet this poor man can have no relief from Congress.

Mr. GILLET. He would be covered by my bill.

Mr. DAWSON. I do not know what a legal definition of "hazardous employment" is, but I should not suppose that a carpenter working at the bench would be engaged in a hazardous occupation.

Mr. ALEXANDER. Just read the paragraph in that bill, Mr. Gillett, that would cover that case.

Mr. GILLET. My bill provides that any person employed in the service of the United States at any of its manufacturing establishments or navy-yards as an artisan or laborer—

Mr. DAWSON. That would undoubtedly cover the case, because he was employed at the arsenal. Another man engaged in similar occupations was working at an emery wheel. That ordinarily would not be considered as a hazardous occupation, as the term goes in civil life. He was sharpening a tool on an emery wheel. That emery wheel burst and killed the man outright. That was some years before the case of Mr. Severus Hartman occurred.

Mr. ALEXANDER. That is what emery wheels are liable to do, and it seems to me that a man engaged to sharpen tools upon an emery wheel is engaged in a hazardous occupation.

Mr. DAWSON. That may be the legal understanding of a "hazardous occupation," but I do not think it is the common understanding. Those cases only emphasize in my mind the necessity of this committee's taking some action upon this question.

I do not know that the committee cares to hear what the President said about it in his message in January.

Mr. ALEXANDER. We have it.

Mr. DAWSON. He stated it with great clearness in his message.

Mr. ALEXANDER. That language was taken down in the hearings on a previous day, before you appeared.

Mr. DAWSON. Still, on the rule that good things can not be stated too often, I would like to put it in the hearings again:

I also very urgently advise that a comprehensive act be passed providing for compensation by the Government to all employees injured in the Government service. Under the present law an injured workman in the employment of the Government has no remedy, and the entire burden of the accident falls on the helpless man, his wife, and his young children. This is an outrage. It is a matter of humiliation to the nation that there should not be on our statute books provision to meet and partially to atone for cruel misfortune when it comes upon a man through no fault of his own while faithfully serving the public. In no other prominent industrial country in the world could such gross injustice occur; for almost all civilized nations have enacted legislation embodying the complete recognition of the principle which places the entire trade risk for industrial accidents (excluding, of course, accidents due to willful misconduct by the employee) on the industry as represented by the employer, which in this case is the Government. In all these countries the principle applies to the Government just as much as to the private employer. Under no circumstances should the injured employee or his surviving dependents be required to bring suit against the Government, nor should there be the requirement that in order to insure recovery negligence in some form on the part of the Government should be shown. Our proposition is not to confer a right of action upon the Government employee, but to secure him suitable provision against injuries received in the course of his employment. The burden of the trade risk should be placed upon the Government. Exactly as the workingman is entitled to his wages, so he should be entitled to indemnity for the injuries sustained in the natural course of his labor. The rates of compensation and the regulations for its payment should be specified in the law, and the machinery for determining the amount to be paid should in each case be provided in such manner that the employee is properly represented without expense to him. In other words, the compensation should be paid automatically, while the application of the law in the first instance should be vested in the Department of Commerce and Labor. The law should apply to all laborers, mechanics, and other civilian employees of the Government of the United States, including those in the service of the Panama Canal Commission and of the insular governments.

The same broad principle which should apply to the Government should ultimately be made applicable to all private employers. Where the nation has the power it should enact laws to this effect. Where the States alone have the power they should enact the laws. It is to be observed that an employers' liability law does not really mean mulcting employers in damages. It merely throws upon the employer the burden of accident insurance against injuries which are sure to occur. It requires him either to bear or to distribute through insurance the loss which can readily be borne when distributed, but which, if undistributed, bears with frightful hardship upon the unfortunate victim of accident. In theory, if wages were always freely and fairly adjusted, they would always include an allowance as against the risk of injury, just as certainly as the rate of interest for money includes an allowance for insurance against the risk of loss. In theory, if employees were all experienced business men, they would employ that part of their wages which is received because of the risk of injury to secure accident insurance. But as a matter of fact, it is not practical to expect that this will be done by the great body of employees. An employers' liability law makes it certain that it will be done, in effect, by the employer, and it will ultimately impose no real additional burden upon him.—(From the President's message of January 31, 1908.)

You will remember that the President in another message, on March 25, sent a message in which he recalled his recommendation in the message of January 31, in this language:

In addition to a liability law protecting the employees of common carriers, the Government should show its good faith by enacting a further law giving compensation to its own employees for injury or death incurred in its service. It is a reproach to us as a nation that in both Federal and State legislation we

have afforded less protection to public and private employees than any other industrial country of the world.—(*From the President's message of March 25, 1908.*)

I think that is about all I have to say on this general subject.

Mr. STERLING. Mr. Dawson, just as a general proposition, which do you think would be the better—a bill giving the employee the right to sue the Government or a bill giving him compensation without any action in court?

Mr. DAWSON. I believe that a bill which would adjust the matter without going into lengthy proceedings in court would be more satisfactory to the employees of the Government.

Mr. STERLING. It would be more economical to them, and I think more economical to the Government.

Mr. DAWSON. I think so. The President has evidently given this subject great study, and in this previous message he suggests that our proposition is not to confer a right of action simply upon the Government employee, but to secure him suitable provision against injuries received in the course of his employment. The average man, whether he is in the Government employ or outside of it, is not especially anxious to annex a lawsuit of any kind, especially a lawsuit against the Government.

Mr. DIEKEMA. Mr. Roberts's bill is perhaps the widest. That would give the fullest latitude.

Mr. DAWSON. Yes, I think it would. From the standpoint of a layman, a private settlement in my opinion is always best for all concerned.

Mr. MOON. I understand Mr. Sterling's compensation bill excludes absolutely all contributory negligence. A man is entitled to compensation if he is injured, whether negligent or not.

Mr. STERLING. Yes; except from willful wrongdoing. It is for the purpose of giving the party who has the adjustment of the matter the right to take into consideration those things.

Mr. ALEXANDER. Would your bill, Mr. Sterling, go so far as to include a letter carrier in the streets of New York who slips on the ice and breaks his leg? Should he be compensated by the Government?

Mr. STERLING. I think he would be reached. The language of my bill is that he can recover where the injury is due to the service, and not to the willful misconduct on the part of the employee. My purpose is to give them all compensation except under those conditions.

Mr. ROBERTS. Under the terms of your bill, Mr. Sterling, is it not broad enough to compensate the Government employee for any accident that happens to him, whether in the course of his employment or not?

Mr. STERLING. No; it has to be in the line of his employment. I do not mean to say that a man could recover under my bill if it was due to his own negligence. I do not think the Secretary of Commerce and Labor or the Secretary of any other Department would give an employee damages in that case; but it is to measure the amount of negligence on the part of the employee.

Mr. ROBERTS. Suppose a letter carrier starts out from the post-office to deliver his mail, and as he walks on the street some evil-disposed person, without any provocation from the letter carrier, violently assaults him and injures him so that he is laid up for some

time. Would you say that he received that injury in the course of his employment? Was there anything in that that was incidental to his employment? It seems to me your bill covers just such cases.

Mr. STERLING. I do not think it would.

Mr. MOON. Suppose he starts out, as Mr. Roberts says, and has knowledge of the slippery streets, and has the alternative of going on the slippery side or upon the safe side, and he deliberately takes his chances and goes on the slippery way. He took a risk, and under the laws of our State he could not recover, because of contributory negligence; but under your bill, Mr. Sterling, I think he could recover.

Mr. STERLING. Yes. I think he could recover, but I think it is largely in the discretion of the Secretary of Commerce and Labor as I have put it in my bill. Of course, any other authority would do just as well to take those things into consideration and fix the amount accordingly. But I do not think, where a man was assaulted by an outside person when he was carrying his mail, that the bill would apply to a case of that kind. The injury would not arise from anything that he was doing in the conduct of his duties.

Mr. ROBERTS. Here is another case: A letter carrier goes up to the door of a house to deliver his mail, and when the door opens a vicious dog rushes out and bites him and injures him so that he is laid up for a time. He clearly would be in the performance of his duty, and would receive his injury in the course of it, so that he would come in under your bill.

Mr. STERLING. I doubt if he would.

Mr. ROBERTS. In most jurisdictions, especially in my State, he would have recourse in two ways—

Mr. STERLING. If a dangerous dog should bite a letter carrier and the injury was received by the letter carrier incidental to the performance of his duties, if it was one of the incidents that he would come to in the performance of his duties, it might be covered as a slippery street would be, or a thing of that kind.

Mr. ROBERTS. As I construe your bill, the carrier clearly should receive compensation under your bill for that dog bite, and could still have cause of action against the owner of the dog, so that by the terms of your bill he would have a double remedy.

Mr. MOON. Yes; as he could in the case of the slippery street.

Mr. ROBERTS. Yes. He could get a double remedy out of it.

Mr. ALEXANDER. Now, who will speak next? Mr. McKinney, would you like to say a word?

STATEMENT OF HON. JAMES MCKINNEY, A REPRESENTATIVE FROM ILLINOIS.

Mr. MCKINNEY. Gentlemen, Mr. Dawson stated that he was not a lawyer, and was glad that he was not. I am not a lawyer, and I am sincerely sorry sometimes that I am not. I think I would understand a little better some of the technical constructions that are being put upon some of these various bills, all of them aiming to accomplish the same result—that is, to provide adequate compensation for injured employees of the Government.

Now, the cases mentioned by Mr. Dawson I am familiar with, he living on one side of the river and I on the other, of the Rock Island

Arsenal, which is in my district, and which employs a large number of men. These cases of injury come up very frequently, and I have been unable so far, as Mr. Dawson has been, to secure any sort of relief for those employees, while it seemed to me only just and fair that compensation should be made.

Now, the Government in these institutions is a competitor in the general field of labor with other manufacturers and operates that employ the same kind of workmen. These other employers are liable to damages in case of their employees being injured in their employ, under certain restrictions, of course, as to the merits of the cases, and I have never yet been able to see why the Government, competing in the employment of labor, should not itself be subject to a fair and reasonable compensation in the case of injury. I know that two years ago, when there was a bill here, I conferred, for one, with Mr. Sterling in regard to the matter, and tried, so far as I was able, to have such a bill reported out of this committee, but at that time the matter was not so well understood as it is to-day, and there seemed to be a disposition not to take it up at that time.

Now, in regard to Mr. Roberts's questions, and Mr. Sterling's, in regard to the scope of Mr. Sterling's bill—

Mr. STERLING. Let me call your attention to the language of that bill. I think these gentlemen are entirely mistaken in their view of what is intended to be meant by the language in the eighth line of the first page. Civilian employees are entitled to damages or compensation for an injury or death by accident arising out of or in the course of the injured person's employment. Now, an assault would not be an accident arising out of his employment.

Mr. ROBERTS. But it would be in the course of his employment.

Mr. STERLING. I will say "and," then, instead of "or."

Mr. GILLET. That would be very different.

Mr. STERLING. I will say "and in the course of the injured person's employment." I think the two things are properly connected there, anyhow.

Mr. MCKINNEY. I would like to ask Mr. Sterling if it is not the intention of his bill that a case like this should come within the terms of his bill: Supposing that a railway clerk were seriously injured by the derailment of a train, the operation of which he has no control over—would not your bill cover such cases?

Mr. STERLING. Yes.

Mr. ALEXANDER. That is provided for in the general course of accidents to railway employees of the Government.

Mr. MCKINNEY. You do not understand that they at this time would be indemnified?

Mr. ALEXANDER. Yes. They can recover damages from the railroad just the same as a passenger.

Mr. MCKINNEY. Now it seems to me that some such bill as that of Mr. Sterling's should be passed. I do not know as to the exact provisions, whether there are some parts of the other bills that might improve Mr. Sterling's bill or not, but after giving what attention I have been able to give to it, I feel that it is a liberal bill, that it tries to take up these accidents and injuries in a way that will work out automatically, and without the necessity being imposed upon the employee of having to institute an action to secure compensation.

Mr. MOON. You speak about the fact that other employers with whom the Government comes in competition are liable for damages to their employees, and that the Government ought to be put on the same basis. Is it not your judgment, if they are put upon the same basis, that that would be sufficient and make the Government liable under the same conditions as an independent employer is liable?

Mr. McKINNEY. As to that, you mean as to the general provisions made? Is not that a varied proposition in the different States?

Mr. MOON. I think they are generally uniform in this respect, that if a man is injured by his own negligence and without negligence on the part of his employer, there would be no liability. If he is working with dangerous machinery, and he knows of the danger of that machinery, and the employer does not know anything about the danger at all and does not report it, and if the employee takes the risk of employment in that respect, he could not complain if he is hurt.

Mr. McKINNEY. That would be a matter that would be subject to different conclusions in different cases.

Mr. ALEXANDER. You do not want a law that Congress shall pass to become a mere accident insurance, do you?

Mr. McKINNEY. Whether it is that or whether it should be called some other name, I want some sufficient and adequate protection thrown about these laboring men in the Government institutions. As a rule a laboring man has very little capital other than his ability to work. Now, then, he goes into the Government employ. He does not always know the exact conditions of all the machinery about him. He knows something about his own machine, the machine that he is operating himself. He may know that his may be a particularly hazardous vocation in his department, or among its machinery, but he may not know, and probably he does not always know. It may be sought to be proved that he should have known that it was a dangerous employment that he was in. But a man is obliged to find employment, and he goes in and is assigned to work upon some particular line of work. Now, from the breakage of machinery, which he might possibly have anticipated or foreseen if he had taken time to find out about it and had nothing else to do—if he had ascertained the condition of all the machinery operated there, if he had done that, he would have discovered the defect; but he would not have the time or opportunity. He may be employed on piecework, in which upon his ability and industry and close application will depend the rate of his wages.

Mr. ALEXANDER. Do you want to put the employee of the Government upon a different footing from the employee of a private corporation—a railroad, for instance, or a great manufacturer of plows or agricultural implements?

Mr. McKINNEY. I do not care to go into that. You would want to involve me in a lot of technical questions that I might get tangled up in. [Laughter.]

Mr. ALEXANDER. Is not this what you want: That the Government employee would have the same right of damages against the Government that the same man would have if he were in the employ of a railroad or a great manufacturing industry?

Mr. McKINNEY. I do not know in what way that would work out.

Mr. STERLING. I will ask you this question, Mr. McKinney: If the Government has not already distinguished on that point by fixing the eight-hour day for Government employees, and if it is a step in progress to do that, and if this is a step in progress to establish this principle here, why would it not be a good thing?

Mr. McKINNEY. That is certainly an advantage that is given to the Government employees that is not given to the ordinary laborers. There is no question about that, and while I am not undertaking here, in a technical way, to consider the provisions of Mr. Sterling's bill, I can see that it is a liberal bill, and at the same time, to my mind, a reasonable bill. It furnishes here, in case of total incapacity resulting from the injury in extreme cases, damages to the amount of \$6,000.

Mr. ALEXANDER. He might recover that under the general law if he was placed upon the same footing with the outside employees; he might get damages for \$16,000, and why should he not? If he is working for the Government and is damaged as vitally as if he was working for a private corporation, why should he not get as much?

Mr. STERLING. I think we should take into consideration this, Mr. Chairman, that at least a third of that would probably go to attorneys' fees, and that is the reason why I think it would be economical for the Government to have a plan of this kind.

Mr. McKINNEY. I would be in favor of making the operation of the law automatic to give damages; to give damages on report of the accident by the proper officer to the Department of Commerce and Labor, and a settlement of the damages under the terms of the bill, without waiting to go into court and hang out a long time before the matter is settled; and I would say that if there is anything in this bill of Mr. Sterling's that should be altered or amended, that is all right enough. I think there is compensation carried in all of these bills that would be very welcome; but I do certainly hope that some bill will be reported out of this committee, so that proper and adequate damages may be secured by these laborers in the Government institutions.

Mr. ALEXANDER. We are very glad to have heard you, Mr. McKinney.

Mr. McKINNEY. Allow me one more word. This matter has been impressed upon me for several years by the laboring people out in my region. They feel that their interests are not properly safeguarded; that they are undergoing risks in the employment of the Government that they would not be taking outside, and they feel it is neither just nor fair to them in the Government employment that they should be without the proper safeguards. I strongly urge a favorable report on the Sterling bill for consideration at the present session.

Mr. ALEXANDER. That is very evident from the fact that you live right near a great Government industry. I have never had it brought to my attention by any constituent, because I do not live anywhere near a navy-yard or armory or arsenal, or anything of that kind. I notice that the Members of Congress who are here to-day are those who live in the vicinity of navy-yards or armories, where the Government employees are engaged in hazardous employments.

Now, Mr. O'Connell, you may proceed.

STATEMENT OF HON. JOSEPH F. O'CONNELL, A REPRESENTATIVE FROM MASSACHUSETTS.

Mr. O'CONNELL. Taking up your point right where you left it, Mr. Chairman, I might call attention to a case that came to me, where there was not a hazardous form of employment, but in which there was a pitiable result. It is a case that has shocked the public conscience in Boston and has called forth many protests, not only to me but to other Representatives. It was a case of a laborer who was working in the post-office building, in the department of the Civil Service Commission, and as he was sweeping up the room one night the shelf on which the file cases were broke and fell. The file case struck him on the head, and he has been paralyzed ever since—paralyzed so that it is utterly impossible for him ever to work again. Some of the finest people in Boston have taken up his case, and societies have pleaded for him, and he is to-day an object of charity, simply because he has no redress. My predecessor in Congress introduced a bill for his relief. I introduced another, and I am informed by the committee that I have no chance of getting any relief until some bill is put in that would justify the committee in coming forward and saying that this was an exceptional case and should be considered in accordance with the law that was subsequently passed.

Mr. ALEXANDER. I think our attention was called to that case at the former hearing by some gentleman outside of Congress. I do not recall his name.

Mr. O'CONNELL. It is the Manning case. That case in itself ought to be striking enough to convince this committee that this law should be made broad enough to cover officers who are working in all Departments of the Government. I have a great number of employees of the Charlestown Navy-Yard working and living in my district, and a great number of Government employees are assigned to the Fore River Shipbuilding Works, which is also in my district, and a great number of post-office employees, clerks, carriers, and other officials are in my district, and civil-service officials and court officers. I do not see any reason why these men should be discriminated against.

I believe the Sterling bill is in the line of civilization and progress, and I believe the Government ought to put itself on record as willing to adopt a measure that will show to the industrial world that we are ready to deal fairly with those with whom we have active work. I do not believe that we should say to the world that because a man enters into relations with the United States Government he thereby minimizes his chances in life.

You say it differs from contractual relation with the ordinary firms. But allow me simply to call the attention of this committee to the fact that if a man goes to war he is pensioned by this Government if he is hurt. He knows when he goes to the war that the chances are all against him. He enters into it with no promise on the part of the Government of redress, but the Government has found it wise to do so, and I believe it will find it wise to do this, and I would like to urge upon this committee the necessity of reporting out something to relieve the condition that exists to-day.

Mr. ALEXANDER. We are glad to have heard you.

**STATEMENT OF HON. WILLIAM M. CALDER, A REPRESENTATIVE
FROM NEW YORK.**

Mr. CALDER. Mr. Chairman, I am engaged in the building business in the city of New York, and I employ a great many men in hazardous work, and in my capacity as a builder of houses I am compelled to look after the safety of my employees. If a scaffold breaks on which a man is working, or a piece of wall falls, or a timber breaks, for which he is in nowise responsible, I am liable for damages. I am compelled to meet this situation, and I have often wondered why the Government has not been disposed to throw the same protection around its employees as private concerns do around theirs.

The chairman has said that most of the Members of Congress here to-day represent districts where there are arsenals or armories or navy-yards or other great Government works. The New York Navy-Yard is in my district, and it is perhaps one of the biggest Government plants in the country. We have employed in that yard from 3,500 to 6,000 men, and accidents frequently occur; men are injured, and lose their legs, and are killed occasionally; and neither in the case of injury or of death is anything done for them or their families.

I have in mind the case of a man who lost his leg three years ago. He was a first-class mechanic, and, of course, was taken to the hospital. He received nothing from the Government, and was able to go back to his former employment later on, and was employed as a third-class mechanic; but he was ultimately discharged because he was unable to do any sort of work. That man resides in the city of Brooklyn, and his leg was lost through no fault of his own. As I recall it, a derrick near where he was working fell, and he had nothing to do with the operation of the derrick.

Mr. ALEXANDER. You feel he ought to have been compensated the same as if he had been working for you?

Mr. CALDER. Yes.

Mr. ALEXANDER. So do I.

Mr. CALDER. I agree with the system recommended in Mr. Sterling's bill. I have not read through the Roberts bill, but have read the Sterling bill, and I quite agree with the system of providing for the injured one or the family of the man who was killed, as proposed here. I agree with the statement of Mr. Sterling a moment ago that it would be cheaper for the Government and much better for the man and his family if this system were followed out. I hope, Mr. Chairman, at some time before the end of this session this committee will report a liability bill for Government employees, and that Congress will pass it. It always seemed to me an outrage, as I said before, that the Government is not compelled to take care of its employees as the Government compels me to take care of mine.

Mr. STERLING. Let me ask you a question. How do the wages of mechanics in the navy-yards compare with the wages of mechanics in other lines of employment?

Mr. CALDER. The law provides that their wages shall be the same as employees engaged in like work in the immediate neighborhood, and it is fair to presume that the mechanics receive practically the same wages, a little bit less, but practically the same, as in outside employment. The clerical force in the navy-yards do not receive anywhere near what they receive outside.

Mr. ALEXANDER. The employees in the shops work eight hours a day?

Mr. CALDER. Yes, sir.

Mr. ALEXANDER. Do your employees work ten hours?

Mr. CALDER. No, sir; eight hours. Nearly all the machine shops in New York City, the great manufacturing plants, ship yards, and so forth, follow the eight-hour system. Eight hours is the customary labor day in New York City, in private as well as in public employment. That is not so throughout the entire country, but it is in New York City.

Mr. ALEXANDER. Now, Mr. Maynard.

STATEMENT OF HON. HARRY L. MAYNARD, A REPRESENTATIVE FROM VIRGINIA.

Mr. MAYNARD. Mr. Chairman and gentlemen, when I first came to Congress there were numbers of instances of men permanently injured in the navy-yard in the town in which I reside, where they would be deprived of the opportunity of earning a living. I have introduced bills for the relief of these men, but it was hopeless, and I have come to the conclusion that it is not worth while to press even for the consideration of these claims, because we can not get consideration of them.

Mr. ALEXANDER. You heard what Congressman Dawson said, that the chairman of the Committee on Claims would not consider such claims?

Mr. MAYNARD. While he has not stated that as a fact positively to me, yet that is the result. I could not get any consideration.

I have in mind a particularly sad case of a man by the name of John Davis, a first-class mechanic, who earned good wages, had a happy family, was officer of an artillery company in my town, and was working on an ironclad, one of the first ironclads built, and some other mechanic handling hot lead scattered it around into his eye and destroyed one of his eyes. Strange to say, he had not long recovered from that and was working on one of these ships again when a piece of steel flew into his eye and totally destroyed the sight of that eye. He and his family lived for a while on the charity of his fellow-workmen, but afterwards went to the almshouse, and a year or two ago he died in the almshouse. His family was scattered and his wife moved away, and his family were broken up and his children dispersed. It seemed to me that was a very sad case, and I introduced a bill for his relief, and I pressed it; but I was absolutely unable to get any consideration for it. That was in my first term in Congress. I have repeatedly introduced bills for the relief of civil employees in the Government yards permanently injured so as to incapacitate them from earning a living; bills to afford them some relief by compensation or pension, or satisfaction of a claim in some way.

I have read the Sterling bill and glanced at the bill of Mr. Roberts, and I rather favor the idea of compensation. I believe if they can have satisfaction without having to prove their claims in the courts it would be better for them and better for the Government. I hope the committee will see its way clear to report a bill that will provide for compensation, and if not for compensation then for

some way of adjusting these matters so that a man when injured in the line of duty, not through his own negligence, can get some some way of adjusting these matters so that a man when injured some remedy will be given by which he can be compensated. I thank you, gentlemen.

Mr. ALEXANDER. Mr. Sterling, do you care to say anything?

Mr. STERLING. No.

Mr. ALEXANDER. We have had a public hearing heretofore, at which all the gentlemen interested in this subject outside have been heard, but I believe there are some of them here present.

**STATEMENT OF MR. ARTHUR E. HOLDER, REPRESENTING THE
AMERICAN FEDERATION OF LABOR.**

Mr. HOLDER. We have here a delegation of clerks from the Brooklyn Navy-Yard, who were not present here before, and they are very familiar with the work in the Brooklyn yard beyond their own vocation. They might possibly like to say a word.

Mr. ALEXANDER. Unless the gentlemen of the two subcommittees that are here desire especially to hear them I do not think it will be necessary to go into it further. You will remember that we had from fifteen to twenty-five individuals who were accorded a hearing on every phase of the subject when it was discussed before.

Mr. HOLDER. Then we have nothing further to add, except that our people, from Kittery, Me., clear down the coast, have all concentrated and united upon the Sterling bill. While we appreciate very deeply the active work and the deep interest of Mr. Roberts and of Mr. Gillett and the rest of the gentlemen who have presented bills in the past, we think this would be the most scientific and the most fair.

Mr. ALEXANDER. What I understand you gentlemen desire is, if possible, to avoid the courts?

Mr. HOLDER. Yes.

Mr. ALEXANDER. Because the process of the courts are interminable and slow?

Mr. HOLDER. Yes; and it is not only the suspense, but also the expense.

Mr. DIEKEMA. The laborers employed by private individuals can settle with their employers if they want to, and you want a provision by which Government employees can settle with some official of the Government who has authority to settle with them?

Mr. HOLDER. Yes; and we might add this, that the principle that the Sterling bill embraces is one of a higher character than any that has ever been previously included in the settlement of differences and damages between contracting parties, and we are only following in the line of civilization and the example that is set by other people in other lines.

**STATEMENT OF MR. JOHN J. FITZGERALD, A REPRESENTATIVE
FROM NEW YORK.**

Mr. FITZGERALD. Mr. Chairman and gentlemen, I believe that an employee of the Government should have the same right of action against the Government that he has now against the private citizen. I believe that there should be a provision in the law somewhat similar

to the New York act, which gives the legal representative either of the husband, or the wife, or the next of kin of the deceased man, whether his death be accidental or not, a cause of action, and I believe the damages that should be awarded and may be awarded can be left safely to the discretion of the court in the case of injury, the same as in any other controversy between citizens.

Mr. MOON. Of course the right of the next of kin to claim is based upon dependence?

Mr. FITZGERALD. Yes. Under the New York act they must show that they have suffered pecuniary damages, either by reason of the loss of somebody upon whom they are dependent or to whom they can reasonably look for or expect aid. In view of what has been said by all the others, I do not care to go into the matter further.

Mr. MOON. Is not that practically the same as the Roberts bill?

Mr. FITZGERALD. I have looked over these bills hastily, and so far as I can see, the Jones bill more nearly meets the views that I entertain than the others.

STATEMENT OF MR. GEORGE E. WALDO, A REPRESENTATIVE FROM NEW YORK.

Mr. WALDO. Mr. Chairman, I am in favor of a measure providing for the payment of damages to civilian employees of the Government who are injured without fault on their part, and in case of their death by reason of injuries I am in favor of payment to their children or surviving wife.

I think there should also be an amendment to the bill here presented making the necessary liability for injuries to citizens through the accidents arising from the negligence of Government employees in practically the same cases and to the same extent as under the employers' liability act.

There are now pending before the Committee on Claims several hundred cases of damages to employees and also to citizens not employees, in cases where the United States would be liable if it were a private individual or a private corporation. In all such cases the United States ought to be liable, and a general law should be passed so that applications could be made through suits in the Court of Claims or in the United States courts to recover damages against the United States under the same circumstances as in the case of claims against a private corporation.

STATEMENT OF MR. FREDERICK H. GILLETT, A REPRESENTATIVE FROM MASSACHUSETTS.

Mr. GILLETT. I would like to say a word as to the suggestion that Mr. Roberts made, that there ought to be a general or indefinite appropriation from which all of these claims should be paid. I do not think that is right. It certainly is in contradiction to the whole course of Congress in the past, by which we insist on keeping control of all such judgments. They go to the Appropriations Committee. They are invariably put on the general deficiency bill, but in that way we keep track of the expenses of the Government from year to year. Whenever a judgment is rendered it is certified to Congress

by the Secretary of the Treasury, and invariably such judgments are always put right into a general deficiency bill.

If you do not do that, Congress year by year has neither the knowledge nor the control that is necessary over such expenditures, and the Appropriations Committee, I believe, would undoubtedly oppose any bill that would contain such a provision. It is in contravention to the whole method of keeping track of such expenditures. It would not increase the difficulty of getting the money at all—I mean the change that I suggest in the method proposed by Mr. Roberts. The judgment is certified as a matter of course, and is recommended by the Appropriations Committee to Congress as a matter of course.

Mr. FITZGERALD. I heartily approve of what Mr. Gillett has just said.

Casualties at the Portsmouth Navy-Yard, 1904-1907.

January 21, 1904. Goodwin, Harmon, laborer, yards and docks, right side injured.

January 22, 1904. Goldsmith, R. E., laborer, yards and docks, left hand injured.

January 29, 1904. McCourt, Alfred, ship-fitter, construction and repair, left eye badly hurt.

April 19, 1904. Heeney, Joseph, riveter, construction and repair, middle finger, right hand, badly injured.

April 22, 1904. Gilman, Jacob A., laborer, yards and docks, numerous injuries, both eyes, left wrist, right jaw, left knee, right shin.

May 6, 1904. Quinn, John, laborer, yards and docks, right hand injured.

May 6, 1904. Hutchins, Eli, laborer, yards and docks, fracture rib, left side.

May 31, 1904. Newsholme, Lot, machinist, construction and repair, part of finger cut off.

June 4, 1904. Locke, John, joiner, yards and docks, severe injury left foot.

July 1, 1904. Paul, W. F., shipwright, construction and repair, left leg badly injured.

July 11, 1904. Shapleigh, W. A., laborer, yards and docks, right foot injured.

July 13, 1904. Moulton, E. L., laborer, yards and docks, dislocation left shoulder.

July 15, 1904. Leavitt, Frederick, joiner, yards and docks, right hand severely hurt.

July 15, 1904. Frafft, Joseph, laborer, yards and docks, thumb left hand taken off.

August 5, 1904. Malbone, W. A., electrical mechanic, yards and docks, left shoulder hurt.

August 10, 1904. Jones, J. A., ship joiner, construction and repair, severe injury scrotum.

September 26, 1904. Hayes, George, patternmaker, steam engineering department, finger right hand cut off.

October 10, 1904. Clough, C. R., laborer, construction and repair, left arm severely injured.

October 25, 1904. Amazeen, J., laborer, yards and docks, right hand badly hurt.

October 31, 1904. Cate, H. F., laborer, yards and docks, severe injury to right eye.

November 3, 1904. Caswell, Frank, laborer, yards and docks, index finger left hand very badly cut up.

November 4, 1904. Frisbie, A., laborer, yards and docks, lower lip badly cut.

November 26, 1904. Frame, Joseph, joiner, yards and docks, hand and fingers severely cut by buzz saw.

December 2, 1904. Wilson, C. H., laborer, steam engineering, left leg severely crushed.

December 19, 1904. Trefethen, D. R., joiner, construction and repair, right hand badly cut.

February 8, 1905. Rice, A. L., ship fitter, construction and repair, injury to right eye.

February 25, 1905. Chase, Joseph, apprentice joiner, left hand and forearm badly lacerated.

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March 14, 1905. Hutchins, John, laborer, yards and docks, bad injuries to left hand.

March 15, 1905. Kimball, C. F., laborer, yards and docks, numerous injuries face and neck.

March 15, 1905. Austin, Joseph, lendingman, yards and docks, severe concussion.

April 12, 1905. Harold, H. A., laborer, construction and repair, severe injury left hand.

April 28, 1905. Dunton, Howard, laborer, equipment department, severe abdominal contusion.

May 2, 1905. Billings, Thomas, painter, construction and repair, head and chest badly injured.

July 15, 1905. McGraw, James, laborer, yards and docks, left foot badly crushed.

July 29, 1905. Henley, Charles D., laborer, construction and repair, dislocation left shoulder.

August 18, 1905. Lynch, Michael, shipfitter's helper, construction and repair, bad injuries to head.

September 12, 1905. Russ, Orin, laborer, supplies and accounts, injuries head and body.

October 9, 1905. Amazeen, W., laborer, yards and docks, right ankle crushed.

October 13, 1905. Treddick, John, laborer, construction and repair, left ankle crushed.

October 25, 1905. Lucas, George F., laborer, yards and docks, injuries to head.

November 1, 1905. Jackson, S. A., millman, construction and repair, left hand badly cut.

December 9, 1905. Abbott, C. P., carpenter, steam engineering, injury to left hand.

January 8, 1906. Hayes, C. S., boatbuilder, construction and repair, severe injuries right hand.

January 24, 1906. Duffy, Patrick, laborer, supplies and accounts, injury to right leg.

February 7, 1906. Emery, Mallard, driller, construction and repair, severe contusion right leg.

February 26, 1906. Peter, Andrew, laborer, supplies and accounts, fatally injured by fall down elevator shaft.

March 8, 1906. Webber, G. W., puncher and shearer, construction and repair, right hand hurt.

March 15, 1906. Truman, Guy, rivet heater, construction and repair, severe laceration right hand.

April 21, 1906. Bowman, Walter, electrical mechanic, yards and docks, injury to left foot.

June 8, 1906. Ryahu, William, quartermen boilermaker, steam engineering, face and hand injured.

July 3, 1906. Fernald, George, boilermaker's helper, steam engineering department, overcome by noxious fumes.

August 27, 1906. Bessley, J. H., laborer, yards and docks, contusion right foot.

September 19, 1906. Wilson, Asa, laborer, yards and docks, left leg badly hurt.

November 27, 1906. Blake, Samuel, holder on, construction and repair, sprained ankle.

January 2, 1907. Sheafe, A. A., cabinet maker, severe scalp wound.

April 3, 1907. Johnson, Edw. F., teamster, yards and docks, fracture of right toe.

April 8, 1907. Harvey, J. W., machinist, steam engineering department, injury to left hand.

April 30, 1907. Stevens, R. A., ironsmith, right elbow badly hurt.

June 17, 1907. Hutchins, H. W., laborer, yards and docks, scalds of both legs.

November 1, 1907. Bartlett, W. F., machinist, fracture of jaw and loss of several teeth.

November 16, 1907. Finathy, Robert, driller, construction and repair, sprains and contusions both ankles.

November 23, 1907. Linchey, James, laborer, yards and docks, large scalp wound, internally hurt.

December 31, 1907. Jenkins, D. H., puncher and shearer, construction and repair, compound fracture of second toe, left foot.

Casualties at Watertown Arsenal.

Dan Curley. Killed ten years ago in a boring mill, 1898.
 Henry Quinn. Killed by a fall from staging on chimney.
 Sam Swanson. Killed ten years ago. Glaring instance of negligence on the part of the Government. Caught between a post and bed of a planer and his life squeezed out. Commanding officer had post removed as soon as his attention was called to it.
 Peterson. Two fingers lost; nooks of crane broke when blocking up a 12-inch gun while mounting.
 Charles Hanson. Portable electric drill fell on him and broke both his jaw bones, both collar bones, right arm in two places, and two fingers taken off.
 Henry Pitts. Loading a 12-inch shell; car fell and crushed foot; laid up two months.
 Gauley. Finger caught in unprotected gears of boring mill.
 Ratican. Leg broken by defective car.
 Barney. In block shop lost three toes; piece of heavy iron fell.
 Powers. Big swedging iron driven through his thigh and leg; took three men to pull same out.
 Johnson. Lost an eye through chips.
 Hyde. Lost an eye through chips; brass poisoned same.
 C. Jones. Lost finger.

Construction and Repair Department, Boston Navy-Yard.

Frank Gruno. Lost an eye; out from October 10 to December 10, 1902; chipper.
 George Green. Lost an eye in 1899; fourteen weeks out; chipper.
 Dennis Donahue. Lost an eye; chipper.
 David Devol. Hand smashed by shaper; fifteen weeks out, 1900.
 John Griffin. Hand smashed in shaper; out three months, February 25 to May 25, 1907.
 Joseph Bettencourt. Broken leg; out nearly a year.
 I, Archie Clements, employed as shipfitter at Boston yard, make statement that I received injuries while at work, while employed in after 8-inch turret ammunition hoist, when a large bench or trestle was blown by the wind over into the open barbette, which struck and broke into the timber to which my staging was slung, allowing one side of staging to fall and letting me down about 18 or 20 feet. Was severely injured as a result of same, and was out of work a long time.
 Statement of William Rice. I was employed on March 3, 1908, at Charlestown yard on auxiliary *Sterling*, with anchors and chains, when the derrick fall hook caught the fore and aft hatch beam, dropping it into the hold, falling on my foot, cutting off three toes and bruising other two.
 William McClay. Finger taken off by reaming machine February 20, 1908. Did not have proper use of arms on account of close place to work and very hard to get at.
 Dennis Donahoe. On May 19, 1900, chip from steel plate embedded itself in his eye, of which he lost the sight, and could not return to work for sixteen weeks. Happened on board the *Topeka*, in Boston Navy-Yard. Married and had eight children dependent upon him.
 J. B. Day. Fell from staging, 1902.
 D. Dugan. Hit by bar of iron, 1902.
 C. A. A. Jensen. Foot badly crushed by timber.
 N. P. Davis. Foot badly crushed by timber.
 J. T. Crowley. Hand crushed in winch, 1902.
 Welch. Right foot injured by timber, 1902.
 F. Brandles. Badly injured unloading coal, 1902.
 D. Bryan. Second finger cut unloading iron, 1902.
 D. Bryan. Leg jammed unloading coal, 1905.
 W. Dixon. Killed by upsetting of crane, 1905.
 Curran. Head injured by unloading plank, 1905.
 J. Hurley. Head injured by unloading plank, 1905.
 S. Howland. Head injured by piece of iron, 1905.
 M. Ackers. Fingers jammed by iron plate, 1905.
 J. Cloutier. Foot badly cut by sharp iron, 1905.
 Ott Green. Head struck by plank in dry dock, 1905.

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S. Goosley. Left knee injured on the *New York*, 1905.
 J. Folin. Leg injured by gangway, 1906.
 E. Finnegan. Knee injured by crane, 1906.
 E. L. O'Brien. Skull fractured by fall on wharf, 1907.
 W. M. Sullivan. Head hurt from iron pall falling on him, 1907.
 H. Westpaolare. Fell in hatch, 1907.
 J. F. Barrett. Crushed between coal tubs, 1907.
 P. Maloney. Struck on foot by staging, 1907.
 T. Wallace. Two fingers jammed on *Constitution*, 1907.
 L. Reardon. Fell from *New York*, 1907.
 J. F. Crowley. Fell down hatch on *New York*, 1907.
 A. Ab. Ellsworth. Fell from spar to berth deck on *New York*, 1907.
 M. Malak. Knee injured by starting of propeller of *Kentucky*.
 T. J. Reardon. Left leg injured by falling of coal pile.
 R. Bruce. Tripped over chain in dry dock; hand hurt.
 C. Ruff. Fell in hold of *Celtic*; left arm broken.
 M. Malak. Hit by plank.
 G. F. Doe. End finger cut off, February 10, 1906.
 G. F. Horne. Hand caught between gear and cone; badly injured.
 C. Crawford. Split thumb while at work on lathe, October 3, 1906.
 A. J. Murray. Struck in eye by piece of brass.
 M. J. Murley. Fell and injured head.
 H. D. Heyland. Cut one finger while moving steel bar.
 L. M. Dosse. Cut wrist by slipping of brass casting.
 E. J. Burke. Struck on head by handle of portable crane.
 G. A. Smith. Injured for life by being scalded.

Equipment department, Boston yard.

Frank Cutting. Burned by furnace flash; badly injured.
 J. J. Keohane. Burned by furnace flash; badly injured.
 William Rice. Lost 4 toes by fall of strongback on *Sterling*.
 Thomas E. Cleary. Leg hurt by piece of pulley.
 J. P. Fitzgerald. Badly burned; died shortly after.
 C. J. Lamont. Fell from rigging on *Cumberland*.
 Daniel J. Daly. Leg badly injured.
 Thomas F. Riley. Leg badly injured.
 William P. Cahill. Leg broken.
 Cornelius Scannell. Head badly injured.
 Charles Curran. Head badly injured.
 James Holt. Struck in testicles by billet.
 A. Ar. Anderson. Eye badly hurt by piece of steel.
 Hugh Kelley. Face badly cut by flying material from wheel.
 M. J. Brennan. Burned by flash from furnace.
 Isaac Lamothe. Struck in abdomen by piece of steel.
 Charles Televish. Leg broken.
 James McMahon. Leg broken.
 James O'Reilly. Leg broken.
 Michael Fay. Leg broken.
 William Havey. Eye badly injured by piece of steel.
 Butters. Broken arm and ribs.
 Spargo. Hand injured.
 Collins. Leg broken.

Additional steam engineering accidents, Boston yard.

John W. Fletcher. Right arm cut off by being run over by electric crane; clear case of negligence on part of Government.
 Colin C. Crawford. Fell down hole on *Tennessee*; broke ankle; laid up long time, governmental negligence.

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